



Top Things Property Managers Can Do to Protect Themselves against COVID-19 Lawsuits

In today's pandemic, property managers need to be aware of the many possible claims coming from stressed tenants. Lawsuits likely to be seen with respect to Covid-19 are breach of contract claims, negligence lawsuits, and premises liability claims, among others. The best you can do is be prepared; below are some tips for protecting yourself.

Pandemic Plan First, you need to create a pandemic plan for your property. This is simply a list of "reasonable" best practices and policies that your property can adopt. The important thing to remember is that once the policy is created, it must also be enforced equally amongst all tenants and employees. A good place to start when drafting your pandemic plan is with the most current CDC guidelines for prevention. Your pandemic plan will be a guidebook which can be provided to everyone and will contain policies that are applicable to tenants, employees, and guests. We also recommend making the materials available in multiple languages to your tenants, employees, and visitors.

Plans can include anything from mandating mask requirements in the property, having hand sanitizer stations in high-traffic areas, taking daily temperatures for all persons visiting the property, having direction of travel for walking through the building, and limiting the number of people in common areas and elevators. You will want to set forth guidelines on how to screen visitors to the building, develop plans on how to deal with infected persons, and whether you can share the status of infected persons with others. Due to the increase in persons working from home during the pandemic, you will also want to consider including policies and procedures for how your employees can work from home and be successful.

Safety is a Top Priority Your pandemic plan must be enforced to be effective. You must ensure it is being followed and enforced by all tenants, employees, and guests. You may want to consider cleaning high traffic areas more often and even closing non-essential common areas to reduce the risk of infection. It is also worth considering whether it is feasible to limit visitors and guests to the building and develop plans for deliveries and construction in the property.

Communication is Key Communication with your tenants and employees is always paramount. This is especially important in lawsuits related to Covid-19, since communications with your tenants will permit you to assert the defense of assumption of the risk. Therefore, we recommend that when you make your pandemic plan, encourage questions, solutions, comments, and concerns from your tenants and employees. On that note, you should prepare the appropriate signage in the premises to adequately warn your tenants, employees, and guests of potential liabilities for being in the premises.

Exculpatory Clause In any dispute with tenants, the first thing your attorney will want to review with you is your lease agreement. Most commercial leases **DO NOT** address obligations and

liabilities for pandemics, like Covid-19. Therefore, consider drafting a contractual exculpatory clause. This would permit you to assert the defense that your lease contains an exculpatory clause to protect the owner and manager from liability for issues surrounding a pandemic. In Texas, these clauses are generally upheld, unless there is a gross disparity of bargaining power between the two parties. Since your lease agreement likely does not have one of these provisions currently, you may want to consider having your attorney draft a lease addendum in order to better protect yourselves.

Preservation of Evidence In any lawsuit, it is always important to preserve evidence to avoid the potential for spoliation. Spoliation is the improper loss or destruction of relevant evidence. If a party does not reasonably preserve discoverable evidence, it may impair the opposing party's ability to present its claims or defenses. This is a fact question for a court to consider, but it could result in sanctions being imposed against you or an instruction to the jury that you failed to take proper precautions. Therefore, it is a prudent practice that once you are notified that your company may be involved in a lawsuit to take reasonable measures to make sure all relevant evidence is protected. This evidence can include videos, photos, email communications, and any internal correspondence. By implementing a plan on how long certain evidence will be stored and maintained, it will make your employees and staff aware of how far back this evidence exists and whether it can be helpful in the defense of any claims.

Draft Disclosure Agreement Consider adopting a release and disclosure agreement for use by tenants and employees to notify others in the premises of potential infections. This will ensure that persons are warned of as soon as possible to avoid additional exposures. If you don't have an agreement in place, you may be prohibited from disclosing private medical information about persons to others. By having your tenants and employees enter into a disclosure agreement, you can then immediately notify everyone in the property about potential infections to ensure that they take the necessary precautions to protect themselves and ensure that the infection does not continue to spread to others. In that same agreement, you can also consider adopting releases for the use of property amenities to ensure that tenants, employees, and guests are aware of the potential hazards that exist from utilizing certain common area services.

Repair Plan If possible, see if your tenants are willing to enter into a repair plan to temporarily suspend all non-essential or non-emergency repairs on the property. This is all contingent on what the parties' obligations are under the lease, but if a tenant has expressed concerns about potential exposure, then they may be willing to suspend certain services in order to be better protected. You can also consider sharing online resources for conducting non-emergency repairs or even providing the materials for your tenants to complete their repairs on their own.

Virtual Operations At this time, most management companies likely have virtual operations in place. If you don't have virtual operations in place, consider making property tours virtual. You can also conduct electronic lease executions for new leases and renewals. If economically feasible, consider updating your technology in order to go digital at the property. This will allow you to accept online applications, online payments, and permitting online repair and remedy requests.

Consult with an attorney If you have any concerns about your obligations or potential liabilities your company may face, first [consult with an attorney](#). An Andrews Myers attorney can assist you with drafting your pandemic plan, exculpatory clauses, and/or a disclosure agreements for your tenants and employees. Please reach out to us if you have any questions.

For more information please contact [Bret Rycroft](#).