

# COVID-19 CONSIDERATIONS FOR COMMERCIAL TENANTS ALBERTA

Gowling WLG has been monitoring the development of COVID-19 closely and is continuously advising clients as more information becomes available. In the interest of helping **tenants** who lease commercial space manage the challenges created by the outbreak of COVID-19, Gowling WLG has prepared the following bulletin. Updates will be available as new information is released.

**Health and safety of your staff:** [Click here](#) to learn more from our employment and labour law professionals across the country.

**Rent:** Many tenants are asking us whether their rent obligation is deferred or forgiven as a consequence of the COVID-19 pandemic and state of emergency. The short answer is that it is very unlikely that the rent is suspended or abated.

- While every lease is different, most will include a 'force majeure' or 'unavoidable delay' provision that suspends the fulfillment of an obligation by an unavoidable occurrence. This clause is often written in favour of the landlord only, and if it extends to the tenant, invariably excludes the payment of rent, and often the surrender of the leased premises on the expiry of the lease. As such, even if there is an unavoidable delay clause in your lease, it most likely does not suspend the obligation to pay rent when due.
- Occasionally, the damage and destruction provisions of the lease are broadly enough stated to extend to a pandemic but the rent abatement provisions are generally tied to "damage" to the leased premises or the building. As such, while it is worth checking, these provisions are unlikely to suspend the payment of rent.

**Business Interruption Insurance:** While you should consult your insurance broker, it is unlikely that your business interruption insurance will protect you in the event of a pandemic.

## Closures and Going Dark:

On March 17, 2020, the Government of Alberta declared a public health emergency under the *Public Health Act*. New public health measures are now recommended to limit the time Albertans spend in large crowds and crowded spaces. Effective March 17, 2020:

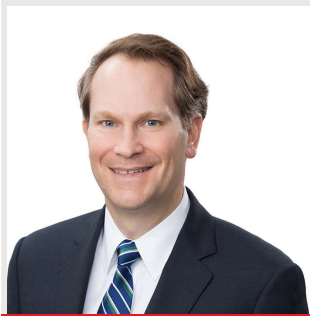
- All events over 50 people are to be cancelled;
- No attendance at recreational centres, casinos, bingo halls, bars, theatres and other facilities;
- Sit-down restaurants can remain open at lower capacity (50% capacity to a maximum of 50 people);
- All students will no longer be attending classes in K to 12 schools until further notice (teachers and other school staff will still be expected work, either from home or at their workplace); and

- All licensed childcare facilities, out-of-school programs and preschool programs are closed immediately (approved day homes are exempt as they care for fewer than 7 children at a time, but should use enhanced sanitation practices).

Many commercial leases require the tenant to stay open for business. A failure to do so may not only constitute an event of default but may also void other tenant rights such as options to renew, rights of first refusal, parking and signage rights etc. **Many tenants are asking, will my closure constitute an event of default under my lease?** Strictly speaking, the answer may be yes if your lease mandates you to stay open and your lease does not include a force majeure/unavoidable delay clause in your favour or a compliance of law requirement (which may arguably supersede the operating covenant). That said, however, we expect that it is unlikely a court would enforce an operating covenant on the grounds that it is contrary to the public interest in light of the legally mandated closures.

**Insurance Concerns:** If you elect to work remotely or should you be legally mandated or elect to temporarily cease operations, we recommend that you both advise your landlord and your insurers. Most insurance policies will require you to notify the insurer of any material change in circumstances, and a failure to do so could void the insurer's obligation to pay out in the event of a claim. We also suggest that you thereafter arrange to have your premises monitored as required under the terms of your insurance policies, e.g. every 24-48 hours.

## KEY CONTACTS



### DARREN J. TAYLOR

Partner

T +1 403-298-1091  
darren.taylor@gowlingwlg.com

[Click here to view full bio](#)

Darren Taylor is an experienced partner in Gowling WLG's Calgary office, practising in the areas of commercial real estate and business law. Areas of expertise: Natural Resources; Corporate Commercial; Real Estate; Recovery Services; Relocation Services; Municipal Law; and Expropriation Law.



### LISA BURIAK

Associate

T +1 403-298-1855  
lisa.buriak@gowlingwlg.com

[Click here to view full bio](#)

Lisa Buriak is an associate lawyer in Gowling WLG's Calgary office, where she practises in the areas of commercial real estate law and intellectual property law. Areas of expertise: Corporate Commercial, Intellectual Property, and Real Estate.

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