

Real Estate Properties: Loss Mitigation Checklist

The Coronavirus (COVID-19) is impacting individuals and businesses across the nation in unprecedented fashion. Real Estate organizations focused in sectors such as hospitality, commercial, industrial, and residential property types are being impacted. Companies are looking for answers regarding insurance coverage for business interruption, extra expenses, rent abatement, among other issues. While the uncertainties organizations face are significant, we expect there will be a significant need for organizations to quantify, document, and properly present financial claims.

Imperium has assembled this checklist to help clients evaluate potential claims for business interruption and loss-related expenses, as well as to begin preparing for the time when these losses may be recoverable. Efforts clients make early on to contemporaneously track, document, and quantify losses are among the best practices to maximize potential future recoveries.

1. Assemble a 'Response Team'

- » The response team should have dedicated responsibility to coordinate action throughout the organization relating to the virus and its financial impact to properties and projects.
- » Depending upon the size of the organization, the participants on this team may vary. Team members may include members of: Executive Management, Financial, Legal, Operations, and Risk Management.
- » For organizations with multiple locations, identify applicable property and/or project representatives at each site and empower them to carry out and be accountable for Response Team actions.
 - Prioritize and obtain information needed from property/project representatives.
- » Identify external advisors such as legal, insurance, lenders, and claims consulting; place "on-call" as needed to ensure availability.
- » Employ information technology to establish an electronic document sharing, organization, and retention platform. Ensure key documentation is obtained early on from employees, especially if the organization expects potential downsizing of the workforce at a later date.
- » Activate communication protocols for employees to keep them informed.

2. Business Interruption, Loss of Income, Potential Claims

- » Adhere to government closure/ return notices
- » Identify and review all relevant insurance policies.
 - If impacted, provide Notice of claim within the prescribed time period
- » Communicate with broker, coverage counsel (as needed), consultant, carrier, and adjuster to establish a claims process, including the immediate next steps.

- » Implement claim cost tracking and accounting protocols.
- » Set up dedicated loss and recovery cost accounts to track all costs related to the event.
 - Ensure appropriate operations and accounting personnel have instructions regarding approval and documentation protocols regarding event-related expenses.
- » Track and document customer inquiries, cancelled orders, potential delayed events that drive revenue generation or create added cost, and other lost sales or loss event costs.
- » Implement document gathering protocols for applicable coverage categories (e.g., business interruption, extra expense, expediting expense, etc.).
- » Be prepared to provide the following information to document the claim:
 - Monthly rent rolls
 - Pre- and post-event sales information
 - Monthly sales forecasts
 - Monthly profit and loss statements
 - Monthly inventory records
 - Monthly payroll registers
 - Invoices and other documentation in support of event related expenses
 - Documentation to support incremental Soft Cost expenses:
 - Additional interest (both on construction and permanent financing)
 - Real estate taxes
 - Advertising expenses
 - Insurance
 - Architect fees
 - Extended general conditions
 - Bond and permit fees
 - Legal and accounting

3. Consideration for Extra Expense

- » Labor and Travel Expenses
 - Detailed description of work performed by individual including name, location/department, date worked, hourly rate, start and end time of hours worked including overtime (i.e., timesheets)
 - Travel expenses for transfer of employees (i.e., mileage, receipts, incidentals)
 - Receipts/ expense reports for meal and snack expenses
 - Receipts/ expense reports for hotel / lodging expenses
 - Receipts for expenses related to delivery services, mailing, etc.
 - Communication expenses (i.e., phone)
 - Training expenses for any additional staff
 - Vendor invoices for temporary labor
 - Receipts for additional incidentals
 - Cleaning and office supplies (i.e., rubber gloves, masks, cleaning wipes, filters, etc.)
 - Purchase order and invoices for purchase of or rental of equipment
- » Transportation Expenses
 - Items transferred to other locations (i.e., warehouse, storage, etc.)
 - Expedited freight required to repair/ replace equipment/ goods
 - Incremental transportation delay charges

- » Operating Expenses
 - Incremental expenses related to inefficiencies
 - Additional Security Guards by hotel and other locations
 - Meal expenses for employees, detail by facility and department
 - Advertising and promotional expenses related to regain bookings and rebuild market share
 - Mailings/ notices sent to customers to advise of status of operations
 - Consulting or attorney fees
- » Inventory
 - Document inventory disposed (i.e., photographs)
 - Assemble documentation in support of the cost and quantities of replaced inventory
 - Assemble documentation in support of the cost and quantities of inventory prior to disposal

4. Capital Projects/ Properties Under Construction

- » Develop a strategy for different impact-period scenarios by assessing internal and external risks, and then defining and prioritizing actions. Update the strategy frequently.
 - Consider the financial viability of equity partners, general contractors, subcontractors, and their supply chain.
 - Consider who can withstand a severe impact and for how long as a basis for go-forward decision making and communication tones.
 - Assess your organization and project teams.
 - Project team retention, based on project "history" knowledge and expertise. (Including contractor's team).
 - Redundancy of project personnel; ability to backfill staffing in the event of virus exposure among project team member(s). (Critical in leadership roles.)
 - Ability to relocate staff to active projects.
 - Added staffing needs as project(s) re-start.
 - Evaluate each project.
 - Develop a spectrum from financially strong to potentially insolvent for all projects.
 - Determine where each project fits along that spectrum.
 - Consider risks to project financing.
 - For projects that may encounter financial challenges or become impractical to continue, either due to funding or general contractor viability – consider alternate measures.
 - Begin to seek alternate or supplemental funding mechanisms.
 - Consider assistance with interim or advanced payments for general contractors, major subcontractors, and vendors with cash-flow concerns.
 - Balance against additional security, possible bonding, or funds control.
 - Consider replacement or supplemental forces.
 - Ensure timely and proper notices are provided based on contract and insurance requirements.
 - For those that are financially strong – promptly discuss potential alternatives to recover time impacts, depending upon the outcome, duration, and impact of the event.
 - Consider some or all of the actions noted for higher risk projects noted directly above.
 - Evaluate and prioritize decision making within the context of the project and corporate exposure.
 - If your resources are limited – put the necessary resources where they are needed the most and where they will make a difference.

- Ensure adequate resources are dedicated to address immediate concerns, document schedule and cost impacts, respond to general contractors, and proactively consult with legal and risk management advisors.

Imperium has also prepared a list of recommended practices for Real Estate owners and developers that have active construction projects. Please see that document for more information relating to construction.

For more information, please reach out to our colleagues below or visit www.imperiumCG.com. Imperium is available to provide an initial consultation at no cost to help clients make the best decisions possible now.

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