



## ADDRESSING ABATEMENT CLAUSES IN NEW OFFICE LEASES

### **OFFICE OWNERS SHOULD CONSIDER LEASE MODIFICATIONS SO AS NOT TO INADVERTENTLY PROVIDE ABATEMENT RIGHTS TO TENANTS.**

By **Kelsi Maree Borland**

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Office owners are looking into lease modifications that will address several of the tenant issues that have cropped up during the pandemic. Among the top issues that office owners have faced, abatement is high on this long list. Office owners should consider lease modifications so as not to inadvertently provide abatement rights to tenants.

“Casualty provisions usually only apply if the physical structure of a premises has been damaged, but it might be argued that COVID-19 contamination constitutes physical damage, or that the closure of the premises due to COVID-19 constitutes a casualty,” **Andrew Ouvrier**, partner at **Cox, Castle & Nicholson**, tells GlobeSt.com. “In order to avoid this interpretation, office landlords may want to expressly provide that a casualty requires damage to the physical structure of the premises, and to provide that the mere closure of the premises and/or the building does not result in a casualty. Office landlords may also want to expressly state that condemnation does not include a closure of the premises or building in order to comply with governmental orders or public health and safety recommendations.”

Some existing provisions already allow for rent abatement if the property is unusable. These provisions are usually broad. “Some leases include provisions that allow a tenant to abate rent if the tenant cannot use its premises due to a failure by the landlord to provide access or some required service,” says Ouvrier. “However, since some of these abatement provisions are drafted broadly, landlords should review them to ensure that they are not triggered by

government required shutdowns or actions taken by a landlord in implementing operational and physical upgrades at its building to address public health and safety recommendations.”

Generally, office owners should also revise building rules and regulations to account for new guidelines and safety needs due to the pandemic. “Commercial office leases generally contain a list of rules and regulations affecting day-to-day operations and procedures, and most leases permit the landlord to make reasonable modification to those rules and regulations,” says Ouvrier. “As such, landlords should consider implementing rules and regulations that intend to limit the spread of COVID-19 and to supplement or reinforce any physical and operational modifications made to the building in order to comply with governmental requirements, as well as any applicable public health and safety recommendations and best practices protocols.”