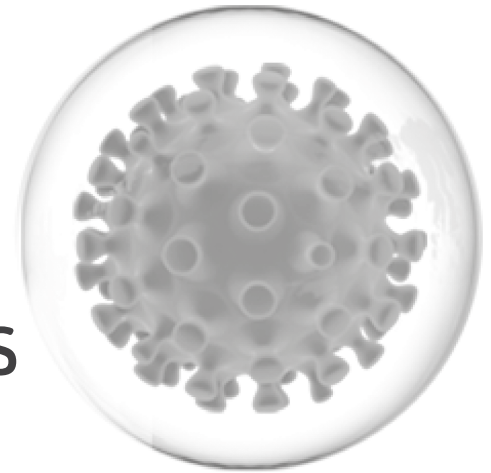


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Coronavirus and entrepreneurs – real-estate lease contracts, leasing contracts, refusal to provide services



WHAT IS THE TEXT ABOUT?

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The possibility to terminate the lease if the tenant does not follow sanitation guidelines or is infected

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The possibility to terminate fixed-term lease agreements and withhold rent payments if the company is quarantined or has to limit its services because of the coronavirus

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The impact of the measures taken by the state to combat COVID-19 on carriers and leasing contracts

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04

The possibility to refuse to provide services to clients whose employee may be infected with the coronavirus

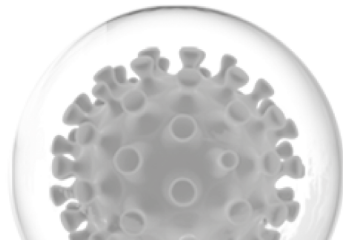
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01

Can I terminate the lease if the tenant does not follow sanitation rules or is infected?

According to Article 683 of the Civil Code, the tenant is supposed to abide by the household rules, and Article 685 defines the sanction: if the tenant grossly or persistently violates the household rules, or by his improper behavior renders the use of other premises in the building burdensome, **the landlord may terminate the lease without notice.** This regulation applies also to the fixed-term lease agreements, which preclude the parties from terminating the lease before the end of the term.

The question of evidence is crucial in such cases. It is necessary to prove that the tenant's workers are infected and therefore breaching the regulations of the Law of prevention and elimination of infectious diseases, or that they must be quarantined for some other reason (for example, after traveling to a region that is in epidemic crisis). Or, alternatively, that the tenant disregards sanitary rules up to such a degree that it is cumbersome for other tenants.



02

Can I terminate a fixed-term lease agreement if I have to limit my services because of the anti-coronavirus measures? Can I refrain from paying the rent if my business has been quarantined?

Actions taken by the government in order to combat the coronavirus epidemic can be qualified as an extraordinary change of circumstances, including economic circumstances. For many businesses that change has been especially difficult: shops, restaurants, sports facilities cannot function, but still have to pay the rent.

In such situation, companies are entitled to request a change or termination of the agreement on the basis of Article 3571 of the Civil Code - Rebus sic stantibus, which is a kind of force majeure clause, valid for every contract subject to Polish law. Under this regulation the lease can be changed by the court if the aforementioned change of circumstances could not be foreseen at the moment of signing the contract and is resulting in a glaring loss for one of the parties.

The best way to settle the dispute would undoubtedly be by negotiations. Carrying-out a thorough legal analysis beforehand will allow one to choose the best negotiation strategy. If the negotiations fail, it may be necessary to take the case to court.

It is worth noting that the court may set the date preceding the judgment as the moment of the effect of a change in the contract or termination of the legal relationship.



03

How do the measures taken by the state to counter the coronavirus epidemic affect carriers, particularly the signed leasing contracts?

Article 14 of the Law of 2 March 2020 on special arrangements for the prevention, counteraction and elimination of COVID-19 explicitly excludes the liability of carriers for losses "caused as a result of legitimate actions by public authorities to counteract COVID-19, in particular for lack of possibility of transportation". Thus, if the authorities prohibit or impose restrictions on, for example, a particular mode of transport or a particular route, the carrier will not be liable towards the users of the transport.

What about the contractors? Let's assume the carrier leases vehicles. Due to the ban/restriction of transport, can it withhold remuneration for the lessor if it does not actually use the vehicles? The first step is to look at the contract and check if and how such situations have been regulated by the parties. In respect of contracts governed by Polish law, it is possible (unless the contracts provide otherwise) to refer to the provisions of the Civil Code: Article 3571, i.e. the extraordinary change of circumstances clause, and Article

495 regulating the consequential impossibility of performance, which entails the expiry of the obligation.

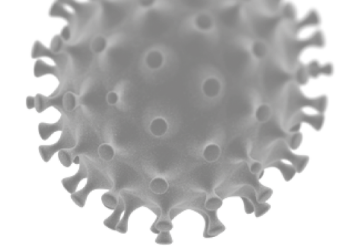
These are the best provisions to be referenced in negotiations with the other party, seeking to amend the rules of cooperation in a way that safeguards the interests of both parties (e.g. by jointly deciding to suspend the performance of the contract for the duration of force majeure, the possibility for the carrier to use the vehicles in another way that is useful to it, e.g. on other routes). The understanding of legal regulations and their proper use strengthens the position in negotiations. If the negotiations fail, the case may be taken to court. The court, after weighing up the interests of both parties, may change the way in which the contract is performed, change the amount of remuneration, or even terminate the contract and settle accounts, and may do so with effect from a date earlier than the date of the judgment.

04

Can I refuse to provide services to a client if his employee may be infected with the coronavirus?

Service contracts are regulated in Polish Civil Code on the basis of the provisions regarding contracts of commission. Unless the parties have agreed otherwise, the contract of commission may be terminated at any time, at the initiative of either party. This also applies to contracts concluded for a fixed period of time, as well as agreements of a continuous nature. If the agreement is terminated without important reasons, the party that initiates termination should bear the losses resulting from this decision.

The parties can agree to limit or exclude the possibility of early termination of the contract, but they cannot exclude the right to terminate it due to **"important reasons"**. If such reasons are proven, the party that initiates termination **is not responsible for the losses** that might follow the termination.



If fulfilment of the service involves personal contact, the suspicion that an employee of the party may be infected with the coronavirus may be such important reason. However, whether or not such suspicion is justified by facts will have to be established on the basis of the specific circumstances.

If the service is dividable and the contractor declares that he will not perform only a part of the service, the ordering party is entitled to withdraw from the contract with regard to the part of the service not performed, or the entire service at its own choice.