

Best Practices for Conducting Retail Leasing Transactions

During the Coronavirus (COVID-19) Crisis

Based on the guidance of public health authorities including the Centers for Disease Control and Prevention and the New York State and City Health Departments, the purpose of this document is to provide recommended practices for real estate professionals conducting retail leasing transactions. Real estate professionals are encouraged to share these industry best practices for conducting such business in NYC with clients and colleagues.



KEY PRINCIPLES

- **Understand the facts:** Continue to check [CDC](#), [NYS](#) and [NYC](#) updates and guidelines.
- **Social distancing:** Public health authorities have recommended maintaining at least six feet social distance as a key strategy to reduce the spread of the Coronavirus (COVID-19). Social distancing should be maintained for all in-person interactions. Meetings and events should be conducted via phone or videoconference whenever possible.
- **Sanitation:** Clean and disinfect all frequently-touched objects and surfaces, per current [CDC](#) and [New York City Health Department](#) recommendations. [Click here](#) for recommended disinfectants for use against SARS-CoV-2.
- **Hygiene:** Wash your hands frequently with soap and water for at least 20 seconds. If not available, use hand sanitizer with at least 60 percent alcohol as recommended by the [CDC](#).
- **Wear face coverings:** Given the consistent challenge to maintain six feet social distance throughout real estate transactions, all parties should wear appropriate face coverings during all in-person interactions.
- **Stay home:** If you, or anyone you have had close contact with in the previous 48 hours is experiencing symptoms of the Coronavirus (COVID-19) or has tested positive for COVID-19, stay home and avoid close contact with others.
- **Seek help:** Call the [NYS](#) Novel Coronavirus hotline if you have questions relating to the Coronavirus (COVID-19) or suspect you have been exposed (1-888-364-3065).

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INITIAL TOUCH POINTS

In order to limit unnecessary exposure, consider holding preliminary meetings over the phone or via videoconference prior to and/or subsequent to viewing space in person. Brokers could then move on to in-person tours after virtual tours have been conducted, or exchange of digital materials such as photos, renderings or video clips has been exhausted.



PROPERTY ACCESS: VIRTUAL

Virtual Tours

Virtual tours should be conducted whenever possible, and proper information should be made available via email/ internet. Virtual tours could be pre-recorded by a Broker walking through the space, or through a third-party vendor. Vendors include: Connect Media, VirtualApt, Shootin, etc.

Information on the space should include:

- Clear, high resolution photos
- Specific descriptions regarding physical attributes of the space (size of ground floor, basement and/or upper floors, frontage, ceiling heights, etc.)
- Outline of the existing space conditions regarding utilities, HVAC, restroom(s), stairways/elevators/ escalators, finishes, etc.
- Detailed floor plan(s) in PDF format and CAD plan(s) if available
- **Restaurant/Food & Beverage Space:** specific details regarding venting, liquor license, Public Assembly (if applicable), etc.

Live Virtual Tours

If a pre-recorded virtual tour does not suffice, or does not currently exist, and with the written approval of the landlord, sub-landlord or assignor ("Landlord"), Landlord's Broker may enter the space with an appropriate face covering to conduct a live showing of the space (via videoconference).

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PROPERTY ACCESS: IN-PERSON

Limitation of Liability

Brokers must always comply with respective building and management guidelines. Prior to arriving for any tour, Brokers should familiarize themselves with such protocols, including but not limited to, designated hours for tours, elevator usage and access to ancillary spaces, etc.

Where a REBNY member is involved with the coordination of in-person/on-site visits to a property by either vendors or consumers, a [“Limitation of Liability” Form](#) should be utilized.

The purpose of the form is to advise any party who is entering a property, or who is permitting another party to enter a property, of the potential liability that may result from exposure to the Coronavirus (COVID-19). By signing the form, such party acknowledges and assumes the risks associated with conducting property visits in-person, including potential exposure to the Coronavirus (COVID-19) and the consequences that may result from such exposure.

A REBNY member who is involved with the coordination of in-person property visits should provide the Form to the parties who will be involved in such visits, including a signed copy of their own, assuming the same risk for entering the property. The form should be used for in-person visits to both residential and commercial properties.

General Precautions for Showings

A health screening should be required of all Brokers and Consumers attending in-person showings using this [Health Screening Questionnaire](#) which determines whether such person has:

- a. knowingly been in close or proximate contact in the past 14 days with anyone who has tested positive for COVID-19 or who has or had symptoms of COVID-19
- b. tested positive for COVID-19 in the past 14 days, or
- c. experienced any symptoms of COVID-19 in the past 14 days

Should a Broker choose to implement this precaution, they **must** practice it uniformly for **all** in-person interactions in order to remain compliant with Fair Housing rules and regulations. Each person must be presented with, and answer, the questions set forth in the questionnaire. If someone refuses to answer the questions, or answers the questions affirmatively, then such person will not be permitted to attend the showing.

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Should a Broker proceed with an in-person showing, the following general protocol should be implemented only after the Broker has discussed precautions and a safety action plan with the Owner or Landlord. As per current [State law](#), Tenants cannot be inside the property during in-person showings. The Landlord should make arrangements with the Tenant in order to show the space.

- Per current [CDC](#) guidelines, Landlord's Broker must clean and disinfect all frequently-touched areas and surfaces in the space before and after every showing.
- The Landlord's Broker must provide alcohol-based hand sanitizer and/or hand soap and paper towels to all visitors upon arrival.
- Any party may cancel or postpone a showing without prejudice or penalty upon any indication of [Coronavirus \(COVID-19\)](#), cold or flu-like symptoms.
- Attending parties should check their temperatures at home to ensure it is below 100.4° F prior to arriving for a showing.
- All parties must wear appropriate face coverings during a showing. Should either party arrive without an appropriate face covering, any party may cancel or postpone the showing without prejudice or penalty.
- Do not shake hands during in-person interactions.

Broker Events or Group Showings

Restricted: Given the consistent challenge to maintain six feet social distance throughout real estate transactions, traditional broker events or group showings may not be permitted in most buildings. If permitted, such events should be conducted by appointment only, with one party inside the property at a time. Prior to advertising any appointment-based showing, Brokers should review and confirm designated protocol as established by the Landlord for such interactions. Appointment-based showings should not be conducted if maintenance of appropriate social distance of six feet is not possible for all parties at all times. See guidance for Virtual Tours above.

General Showings

Limited: Showings shall be performed only by Landlord's Broker or a designated Landlord contact, such as building management, while maintaining at least six feet social distance, after having discussed precautions and a safety action plan with the Landlord. Showings should be held by appointment only.

- All parties attending a showing must wear appropriate face coverings for the duration of the showing. This expectation must be established ahead of time via email agreement. Should any party arrive without a face covering, or upon any indication of fever or other illness, either party may cancel or postpone the showing without prejudice or penalty.
- Limit in-person attendees to Landlord's Broker or designated Landlord contact, Tenant and Tenant's Broker.
- If six feet social distance cannot be maintained for all parties, attendees should be limited to one person inside the space at any time. The Tenant's Broker is encouraged to attend via videoconference or other virtual means in this scenario.
- Only the Landlord's Broker or the Landlord's designated contact opens doors, cabinets, etc. Tenant and/or Tenant's Broker will be asked not to touch anything in the space at any time (with the exception of essential surfaces such as handrails, etc.).
- The Landlord's Broker or Landlord's designated contact must clean and disinfect all frequently-touched areas and surfaces in the space after the conclusion of each appointment, following current [CDC](#) guidelines.

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DUE DILIGENCE: PRE-LEASING

- Landlord's Broker should provide listing information, photographs, street maps and floorplans by electronic means to avoid hand-to-hand contact.
- Site inspections (by architects, contractors, etc.) should be arranged between the parties. All parties should arrive wearing appropriate face coverings, and all findings should be shared electronically.
- Videoconferencing should be utilized to "meet" with clients in order to explain documents.
- Non-disclosure and other agreements should be transmitted and signed electronically.
- Any proposals should be submitted electronically between the Landlord and the Tenant through their respective brokers. If either the Landlord or Tenant is operating without a broker, such proposals shall be submitted directly and electronically, eliminating the need for person-to-person contact.
- The same principle of using technology should be utilized for the Landlord's review of Tenant's financials.



LEASING

Electronic Handling of Lease Documents

All proposals, term sheets, lease and related documents, such as a guarantee or other Exhibits attached to the lease, shall be prepared, transmitted and signed electronically.

Meetings Between the Parties

Meetings between the parties, inclusive of their attorneys, architects or other professionals, should be conducted using alternative and reliable communications systems such as FaceTime, Skype, Zoom or Google Hangouts, among others, without the meeting being recorded. Coordinate the preferred platform with all parties involved and schedule virtual meetings accordingly.

Follow-Up Site Inspections & Surveys

Site inspections and site surveys should be conducted while maintaining six feet social distance, with appropriate face coverings and with limited attendees. If six feet social distance cannot be maintained for all parties, attendees should be limited to one person inside the space at one time. If necessary, consider conducting inspections, surveys, etc. remotely where possible.

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Mutual Execution & Delivery of the Lease

The Lease and any related documents should be prepared, executed and transmitted electronically. When an original hard copy of the document(s) is required by either party, such documents should be fully executed by the Tenant and sent to the Landlord via overnight mail or U.S. Postal Service according to instructions disseminated by the Landlord's attorney. Upon Landlord's receipt, the original copies shall be countersigned by the Landlord. Subsequently, a fully executed copy shall be sent via overnight mail or U.S. Postal Service to the Tenant, or their attorney, for their records. If the lease must be notarized, utilize "Audio-Visual Notarization" when needed.

Payments due in order for the lease to become effective (such as security deposit and/or first month's rent) should be paid via wire transfer or other electronic means. Alternatively, certified or official bank check(s) should be sent by overnight mail or U.S. postal service to an address indicated by the Landlord or their attorney to limit hand-to-hand contact.

Should the attorneys and appropriate parties need to attend a lease signing in person, the following should apply:

- Documents and collateral should be delivered to the attorneys involved in the transaction prior to the lease signing.
- In-person lease signings should be limited to only essential parties. Real estate brokers and third-party representatives should not attend lease signings.
- To the extent possible, as many documents that can be signed prior to the meeting should be.
- Per current [CDC](#) guidelines, the meeting room in which the lease signing is being conducted should be thoroughly cleaned and disinfected prior to and after each closing appointment. All parties must arrive wearing appropriate face coverings.
- To the extent possible, multiple rooms should be utilized so the parties can be separated at a safe distance (at least six feet).
- All parties should bring their own pens for signing documents.
- Additional precautions could include taking temperatures prior to attending the lease signing and completing questionnaires concerning health issues.

At a time of unprecedented uncertainty, it is our civic responsibility to ensure that the industry take every measure possible to protect the health of our community by conducting business in line with the recommendations of public health authorities. For this reason, we urge our members to continue to leverage technology wherever possible to minimize health risks of our fellow New Yorkers.

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