

# ANDERSON KILL CO-OP, CONDO & REAL ESTATE ADVISOR

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## EDITOR'S NOTE:

*As we become more acclimated to the coronavirus-mandated lifestyle, we will communicate adjustments and modifications to existing protocols. As such, we will continue to update our original client alert (distributed last week) to reflect additional "best practices" that come to light.*

## New Ways to Enforce Coronavirus Safety Measures in Your Condo/Co-op

By Deborah B. Koplovitz, Bruce A. Cholst and Cathleen K. Hung



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**U**nder Executive Order No. 202.10, signed by Gov. Andrew Cuomo on March 23, 2020, all nonessential gatherings of any size for any reason are prohib-

ited through April 22, 2020. In addition, all New Yorkers, whether they are healthy or sick, must stay home unless they are an essential worker.

On March 27, 2020, the New York State Department of Economic Development updated the definition of an "essential business" that is exempt from in-person restrictions. Health care operations, food and beverage stores, restaurants and bars (takeout/delivery only), and financial institutions remain open. If there are any projects taking place in your condominium or cooperative, be aware that all nonessential construction must be shut down unless it is an emergency construction. Emergency construction is a project that is necessary to protect the health and safety of the building's occupants, or a project that must continue because it is unsafe to allow the work to remain incomplete. In emergency construction, social distancing must be maintained at the jobsite, including entering and exiting the building, taking meals, and elevator access. Fines of up to \$10,000 per violation will be imposed to enforce these new safety measures at the jobsite.

According to the New York City Department of Health and Mental Hygiene, people should only leave home for groceries, supplies, essential medical care,

and the occasional solitary exercise. Anyone who has been exposed to symptomatic individuals, or who has tested positive for COVID-19, should self-quarantine for 14 days. The Centers for Disease Control and Prevention has defined quarantine as:

The separation of a person or group of people reasonably believed to have been exposed to a communicable disease but not yet symptomatic, from others who have not been so exposed, to prevent the possible spread of the communicable disease.

The above-mentioned guidelines are essential to slowing the spread of the coronavirus. They are especially vital for the New York City condo and co-op community as New York City is now the epicenter for this disease, and we live in close proximity to one another.

To minimize the risk of transmitting the virus to other residents, boards should adopt certain protocols to ensure any infected or exposed resident spends zero to limited time in the building's common areas. If the board is informed of any resident who has tested positive for COVID-19 or has been exposed to the coronavirus, steps must be taken so that quarantine is not broken. Building staff should place all mail and deliveries at the door of the infected resident, and pick up any garbage left outside the door by the resident. Building staff should perform these duties wearing protective gloves and a mask. If the infected resident requires medical attention, building staff should arrange for exclusive access to the elevator, either for the resident to leave the building, or for medical personnel to enter the building to treat the resident.



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Following use of the elevator by an infected individual or an individual who has been exposed to someone infected with COVID-19, building staff should disinfect the elevator using gloves.

The same protocol of exclusive elevator access and disinfecting the elevator after use might also be applied to building residents who are physicians and nurses, and therefore potential carriers of the virus.

In pet-friendly buildings, a volunteer corps of residents can be organized to walk the dogs of quarantined residents. The resident can coordinate the pick-up and drop-off of their dog with the designated volunteer, with the leashed dog being left outside the apartment door.

## Enforcement

What should a board do when a resident ignores these established protocols? For instance, a resident may continue to have social gatherings in an apartment, allowing nonessential visitors into the building. Or, residents may know that they have been exposed to a symptomatic person with COVID-19, or have tested positive for COVID-19, and nevertheless violate the rule on self-quarantine. The board has a responsibility to ensure that potential coronavirus exposure to other residents of the building is adequately addressed. Best practice during this time when COVID-19 is spreading is to stop all nonessential visitors from entering the building.

Building staff should be instructed not to handle deliveries of any nature, and residents who may have become used to this kind of valet service should be "educated" as to the reason for its temporary suspension.

While the Department of Health has become overwhelmed in the past few weeks, the first line of defense for any building facing a situation where any individual is refusing to quarantine when required to do so under existing government guidelines is calling 911 and reporting the issue. Building management and the board should be proactive in this respect. This call should provide a reasonable defense to any board accused of breaching their fiduciary duty as a result of a shareholder, unit owner or resident failing to self-quarantine. While the courts are open for emergency matters, and we are here to assist any board in need of the assistance of the courts, a call to emergency services will provide the fastest response.

On March 22, 2020, by order of the Chief Administrative Judge, the New York State court system

became closed to all filings including new filings and applications; however, state courts do remain open for emergency application filings related to the coronavirus. Therefore, boards are also still able to seek judicial relief to obtain an injunction or other court order to enforce coronavirus safety measures if administrative agencies are otherwise unable to force compliance.

And, while judicial relief should only be used after all other avenues have been exhausted, Anderson Kill is ready to assist your board should it require an emergency court order to protect the safety of your community.

Incidentally, certain criminal (and family court matters) are still being heard by those courts, so if there are issues with criminality in the building, the police should of course still be called. And, as of March 25, 2020, in the NYC Criminal Court, judges, attorneys and defendants are to participate in court proceedings via videoconferencing from remote locations.

As the coronavirus situation progresses, boards will need to continue to adjust and modify their existing safety protocols. Please make sure to follow our newsletter for continuing updates and reach out to the co-op and condo team at Anderson Kill should you have any questions about how to address a coronavirus question that is affecting your community. ▲

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Anderson Kill's Cooperative and Condominium Law and Real Estate and Construction groups are a group of attorneys from various Anderson Kill departments, including insurance recovery, real estate, and corporate who have an interest in legal issues in the real estate and construction fields. The groups meet periodically to share insights on new developments in insurance, cooperative and condominium, construction, and real estate law, in the belief that an inter-disciplinary approach to legal problems will often maximize client profitability or recoveries, while minimizing costs.

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Based in New York City, the firm also has offices in Philadelphia, PA, Stamford, CT, Washington, DC, Newark, NJ, Los Angeles, CA and Newton, MA.

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