



## **Vacancy Exclusions**

**By Shanti Barclay**

On March 24, 2020, the Ontario government shut down non-essential businesses. On April 4, 2020, the shutdown was extended, and the list of essential businesses was shortened.

Companies able to function remotely, could continue doing so and many businesses scrambled to buy equipment such as laptops, in order to decrease disruption and allow employees to work from home.

But what about the physical premises left unattended and the equipment inside?

Most commercial general liability policies include a “vacancy” or “unoccupied” exclusion which effectively removes coverage for an insured peril if the premises insured is vacant or unoccupied. This is typically not an issue for businesses, who generally have staff in the offices and hallways on any given weekday. However, given the state of emergency and the inability of businesses to function from their physical offices, many buildings have had no one inside them since the middle of March. This means no one is there to notice a break in, a broken window, a tap that keeps leaking, a running toilet, a burning smell from an electrical cord...

A building and its’ contents are at far greater risk of suffering damage be it from vandalism, fire or flood if no one is physically around noticing unusual occurrences.

That is why commercial general liability policies typically exclude all covered peril if the building remains vacant or unoccupied for (typically) thirty days. With covid-19, many businesses, whether operating from home or not, will have left their physical premises, as ordered by the provincial government. The language of most unoccupied or vacant exclusions is strong and clear enough to exclude coverage of an insured peril if no one is physically checking in or monitoring the premises.

Business owners, commercial tenants and landlords best protect their building and contents by contacting their broker to ensure what steps they need to take to maintain coverage during the shutdown. In a similar vein, brokers should also be reaching out to insureds to discuss risk management and mitigation in light of the current pandemic.

As the thirty day deadline for most businesses, approaches, everyone should make the call to ensure compliance with the terms of the policy and uninterrupted coverage is maintained.

### **About the Author:**

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Shanti is a partner at ZTGH. She has appeared before the Social Assistance Review board, the Immigration and Refugee Board of Canada, the Human Rights Tribunal of Ontario, the Ontario Superior Court of Justice, Divisional Court, the Ontario Court of Appeal and the Federal Court of Canada. She has a practice primarily in property and product liability. Shanti has also acted as an Appraiser at Appraisal Hearings. She has extensive experience with professional negligence and coverage work.

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