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Disaster Planning: Ensuring Landlord Insurance Issues Are Covered



Regular review of insurance policies is a must, Onder writes.

In today's world, commercial property owners encounter a multitude of risks. Whether it's the greater frequency of severe storms like last year's Superstorm Sandy, preparation for appropriate emergency response in light of the recent shopping center bombing in Kenya, or some unforeseen *force majeure*, landlords/owners/developers need to **ensure** that they are appropriately **insured** to not only reduce risk, but also to manage risk appropriately after a disaster occurs.

Review Your Policy. The first step any owner should take when approaching disaster planning is a thorough review of the insurance policies for each site. Too many times the policy is thrown in a file and only picked up after an incident occurs. That's just too late. Like other aspects of your business that are reviewed on a regular basis, so too should you review your insurance policies.

It is vital to not only understand what insurance coverage you have, but also to review with sound counsel what you truly need. For example, questions to ask include:

- What are the policy limits? And, should they be increased or decreased?
- Are their endorsements pertaining to certain losses like a "hurricane" loss and/or "terrorism" incident?
- What are your deductible limits?

Categorize Your Potential Losses. The differences in "loss" and "coverage" for commercial landlords can vary greatly. During the last year, how many news stories featured a property owner who did not have the appropriate coverage in the aftermath of Superstorm Sandy? Instead of obtaining an insurance check to rebuild, the owner is lost without the appropriate capital to make improvements and is left with a vacant, unusable piece of real estate.

Deft counsel can assist in categorizing your potential loss, to ensure you have the appropriate coverage. For instance, you may not suffer any flooding or damages due to the wind and rain in a storm, yet you may have a shutdown in your business due to protracted power outages. Review your policies to ensure that your business can be compensated appropriately.

Review Your Leases. The second most important documents after your insurance policies are your leases. However, when was the last time you reviewed the insurance policy and lease together with counsel? For instance:

- Who is responsible for damage?
- What does the casualty sections say?
- Do you have an adequate indemnification provision in the lease and is it enforceable?
- Are there exculpatory clauses that could relieve liability?
- Does the lease contain other waivers?

Your lease should spell-out these items and be consistent with your insurance policy. If it is at all unclear, it may be time for your counsel to assist in drafting a lease amendment. Addressing and coordinating the correct response is imperative to clarifying these issues before they become a problem.

Obtain Your Tenant's Insurance Policy and Confirm You Are an Additional Insured. Too often, landlords forget to ensure that they receive the tenant's insurance policy and that they are listed as an additional insured. Remember, you want the actual policy, not just the declaration page or certificate of insurance. Further, if a tenant is without coverage and/or has not listed the landlord, then it may be difficult to become whole in the wake of an incident.

Follow-up on these issues is very important. If your tenant does not provide the policy and/or information that you are listed as an additional insured, it may be time to call a default under the lease. Better to default a tenant who begrudgingly gives you the insurance information, than not and then discover inappropriate or no coverage after an incident occurs.

Inspect the Premises. Most every lease provides landlord the ability to inspect premises for compliance with health and safety standards (i.e., tenant is not using the space for some unauthorized use). When was the last time you inspected your tenant's premises to confirm compliance with the lease? A routine inspection lets you know if your space is used in the appropriate manner as provided under the lease.

Reducing risk is a part of life. The key is to not only reduce it, but also appropriately manage it. Sound legal counsel review of your insurance policies and procedures can save an enormous amount of time, effort and money when dealing with disaster. The legal maxim that equity aids the vigilant, not those who sleep on their rights, could not be more appropriate when ensuring that your insurance covers your commercial property(s). Strategizing with knowledgeable legal counsel now is essential to keeping you ahead of the curve in the real estate market.

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