

Real Estate Strategies

Protective Planning is Your Best Defense Against Disaster

THE OPENING ACT AT THE 21ST CENTURY HAS GIVEN BUSINESSES ON EVERY CONTINENT PAUSE TO CONSIDER PROTECTIVE PLANNING FOR A PLETHORA OF CONTINGENCES RANGING FROM TSUNAMIS AND TERROR ATTACKS TO TORNADOES, HURRICANES, EARTHQUAKES, VOLCANIC ERUPTIONS AND EVEN AVIAN FLU PANDEMIC.

Smart lease negotiations and comprehensive contingency planning can ensure that a business can remain whole, and perhaps avoid missing even a single phone call, fax or email.

Here are a few tips in key real estate/business continuity areas from the experts:

Commercial tenants should re-examine their lease provisions, giving new scrutiny to clauses covering “force majeure” (acts of God), business interruption, and rent obligations in the event the premises are destroyed outright, partially occupiable, or the surrounding locality is subject to a forced evacuation.

Unless you have been exceptionally diligent in negotiating your lease, you may be at risk. Given that insurance provisions are the least understood portions of a lease, tenants often find out the hard way that they are, to some extent, self-insured. And the results can be financially devastating.



Dr. Ronald R. Pollina, Chairman of ITRA suggests that corporate tenants pose these questions while reviewing their leases:

- What is your risk exposure in the event of a liability or injury?
- If your space becomes unusable, because of casualty, injury or

loss of utilities, are you still obligated to pay the rent?

- Is the tenant or landlord responsible for the cost of relocation in the event of an interruption of business?

Most leases are designed to protect the landlord from direct and indirect losses stemming from property

damage and bodily injury claims. No ambiguity exists regarding the landlord's protections under insurance and insurance related clauses.

Insurance and related provisions will determine the type and costs of insurance policy coverage to be carried by the tenant, including:

- Property Damage
- Business interruptions
- Liability to third parties
- Bodily injury

Remember that lease insurance provisions interact with other lease provisions, including:

- Use
- Fire and Casualty
- Maintenance and Repair
- Work Letter
- Environmental
- Indemnification

“When negotiating a lease, a tenant should minimize its risk by addressing the relationships of the above provisions,” Dr. Pollina urges. “This means nailing down who (tenant or landlord) bears the risks in specific situations and who pays for and provides the insurance coverage.

“For example, the Fire and Casualty provision of the lease may indicate that if the tenant is unable to utilize the premises due to casualty, the tenant does not pay rent until the repairs are made,” explains Dr. Pollina, “The Fire and Casualty provision, if equitably drafted, protects landlord and tenant alike from direct losses. But the tenant will be solely responsible for indirect losses, unless there is specific protection designed for this situation.

“After all, the landlord probably has Rent Continuation Insurance to cover the lost rent – but what about the tenant?” asks Dr. Pollina. “If

your firm faces a disaster it may be forced to relocate to temporary space and may be on the hook for the relocation costs. A company also could end up paying a much higher rent in its relocated space.”

Dr. Pollina suggests that tenants consider obtaining Business Interruption Insurance to cover lost income, and Extra Expense Insurance, which covers additional rent and expenses caused by the temporary relocation.

Today's tenant must not only consider every contingency that affects their office space and physical assets, but also what happens if and when they become separated from their space during an emergency or when disaster strikes.

“After a disaster, it is important to get a commercial real estate asset up and running ASAP”, says Scott Seltzer, Chief Executive Officer of ConnectMeVoice.com. “It's the bottom line not only for the building's tenants, but also the neighboring businesses and community recovering from the disaster.”

ConnectMeVoice.com recently issued a special advisory to help tenants protect themselves from the knockout blow of a widespread communication system failure. Seltzer's firm helped keep a New Orleans church and a business in the French Quarter connected in the wake of Hurricane Katrina. They also provided uninterrupted virtual PBX service for several New York law firms during the Summer 2003 eastern US blackout.

- “A great majority of business phone systems fail just at the very time they're most needed, in large part because tenants' telephone equipment is not in a secure location on their premises,” notes Mr. Seltzer.

He suggests tenants consider a newer generation of tele-communications options, including:

- Virtual Hosting: Newer virtual PBX business telephone systems may offer tenants a better chance to stay connected in an emergency. During Katrina, many PBX and cell phone users experienced disruptions as towers fell, antennas and other equipment were damaged and back-up generators intended to protect the grid were submerged.
- Set up an 800 Emergency Number. In an emergency, a properly configured phone system with off-site redundancy can help employers maintain contact with family, friends and other colleagues.

In planning for emergencies, tenants should also review their computer system data storage and protection procedures. Even if a tenant's office is no longer physically accessible, a good information back-up system ensures the ability to continue doing business from a remote, temporary location.

Tenants should prepare for a full range of contingencies by developing crisis plans for internal and external communications during an emergency and even disaster plans that cover the emergency relocation of employees.

The future of a company can hang in the balance when life's surprises strike. It starts with a lease written with tenants' interests protected and continues with planning for other contingencies that help keep the tenant in business.

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