

# It's not my responsibility - Insuring Tenant Improvements



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It's not my responsibility" is not what anyone wants to hear as the opening volley between owner and tenant after a catastrophic property loss; it sets the stage for a contentious claims process. To avoid that scenario, it is vitally important that commercial property owners address who is responsible for insuring the tenant improvements at the time the lease is drafted rather than after a loss has occurred. This will help avoid strained professional relationships between owner and tenant, and will facilitate a smooth and prompt loss adjustment process by the insurance companies involved.

Responsibility for most property coverages are clearly separated between owner and tenant. The owner's policy will usually cover the building, including building improvements. The tenant's policy will usually cover the tenant's personal property, fixtures and tenant improvements, installed by the tenant, in the leased space. However, coverage for existing tenant improvements to the leased space enters a gray area and becomes a question of responsibility between the landlord and tenant after the loss occurs. Claims adjusters will look to the lease to determine who is responsible for TI damages.

If the lease requires that the tenant assume the responsibility for the improvements, the owner's insurance carrier will deny coverage and the tenant's carrier will be expected to cover the loss. However, the tenant's insurer may interpret the lease differently and attempt to turn responsibility back to the owner. Recent claims have shown tenant insurers taking creative positions to avoid claims payment, from citing ambiguity in the lease agreement to asserting that tenant improvement is the responsibility of the owner if the owner paid for the original tenant improvements.


One gray area that often becomes a "hot potato" between insurance carriers is coverage for the cost to remove a tenant's personal property in a loss that affects only the building with no damage to the tenants' personal property. For example, a building suffers earthquake damage but the tenant's storage racks were not damaged in the earthquake however

they will need to be removed from the walls in order to determine the full extent of building damage. The owner's carrier will argue that the tenant's property insurer should pay to move the racks because the racks are not insured under the owner's policy. Conversely, the tenant's insurer will contend that no damage was sustained to the tenant's property in the earthquake and so there is no coverage for removal of the racks under the tenant's policy. A lease that doesn't anticipate and address this sort of scenario with clearly defined responsibilities for both parties can lead to claim denials, disputes between adjusters, and a contentious relationship between landlord and tenant.

As an advocate for their client, the tenant's adjuster will try to obtain payment through the owner's policy in order to avoid adding the loss to the tenant's claims history and loss experience. Conversely, an owner who assumes that their insurer will cover tenant improvements may be shocked when the insurer denies a claim for a valued, key tenant. To avoid these situations, it not only important that the lease clearly state the intended assumption of risk for each party, but that the owner and tenant both communicate with their respective insurance brokers in crafting the appropriate coverage and after the loss confirming their agreed-upon expectations with the adjuster regarding responsibility for loss payments early in the process.

In our experience, most conflicts between owner and tenant can be avoided with a clearly drafted lease agreement that states the insurance requirements for tenant improvements, whether assumed by the tenant or owner; specifically, a line listing the insurance requirements to be carried by each party and for which property. As an example, if the tenant is required to insure the improvements, it should clearly state that the tenant's insurance is to cover that property, including its removal from the space if the building is damaged.

Dealing with a catastrophic property loss can be an anxious time for landlords and tenants alike. Ensuring clear lease language and communicating the parties'



understanding to the insurers immediately following the loss, can greatly reduce those anxieties and all parties can focus on rebuilding and resuming their business as quickly as possible.