

SPECIAL REPORT

LANDLORD'S INSURANCE

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A lease agreement should specify what insurance coverages the parties to the lease should carry. This is important for several reasons.

First, from the landlord's perspective, if common area charges are being charged back to the tenant, specific language will avoid a tenant resisting insurance charges under a net lease. For example, a tenant may resist paying for the cost of flood insurance unless it is specified in the lease or will complain about the liability limit that the landlord has purchased.

In addition, it is in the interest of both parties that in the event of loss by fire or other casualty that the party suffering the loss has every opportunity to survive because of the payment of insurance proceeds. Also, properly structured policies will allow both the landlord and tenant to rely on their own individual insurance coverages, which will avoid litigation between the parties in a tort action.

Last, from the landlord's standpoint, liability insurance with the landlord as additional insured provides in many situations a first layer of liability insurance in the tort claims against the landlord arising out of the premises.

The landlord will also maintain its own liability insurance because the additional insured status for the landlord under the tenant's policy will not cover all claims brought against the landlord. At best it may provide a first layer of coverage for the landlord.

Suggested Lease Language

Landlord's Insurance

- A. *Landlord shall, during the term of this lease, keep in full force and effect insurance coverage for damage to the premises and Landlord's personal property related to ownership or management of the premises in an amount equal to the full replacement cost of the improvements on the premises including by way of example the building without coinsurance and including coverage for the effect of ordinance or laws that regulate the repairing or rebuilding of the premises. This insurance shall protect against risks of physical loss equal to at a minimum the Insurance Services Office form CP 10301000, which is the Special Cause of Loss form.*

Landlord shall also maintain coverage for loss of rental income equal to a minimum of twelve (12) months rental income, including common area charges, and at the landlord's option can purchase coverage for more than twelve (12) months loss of income.

Landlord's deductible for building insurance shall be a maximum of \$25,000 and any amounts paid by the Landlord because of any deductible or waiting period shall be considered an expense subject to the rent adjustment provisions of this Lease.

- B. *Landlord shall keep in full force and effect Commercial General Liability insurance that is written on an Occurrence basis, insuring against claims against the Landlord or Landlord's managing agent for bodily and personal injury, death and property damage occurring in connection with the use and occupancy of the Premises. The coverage afforded the Landlord shall be excess of the primary insurance that the Tenant is required to carry. Commercial General Liability Insurance and any excess insurance shall afford a limit of at least \$5,000,000 for each occurrence, at least \$5,000,000 General Aggregate and at least \$5,000,000 for each occurrence Personal and Advertising Injury; however, Landlord may at its discretion insure higher limits.*
- C. *Workers compensation insurance shall be carried by the Landlord and shall meet or exceed the statutory requirements set by the State of Michigan and shall include Employer's Liability insurance. The*

Employer's Liability insurance shall afford a limit of not less than \$500,000.

- D. Landlord shall purchase Automobile Liability insurance for automobiles used for the maintenance or service of the premises or non-owned automobiles used on its behalf with liability limits of \$5,000,000 or higher at its discretion and including physical damage insurance and any coverages mandated by law.*
- E. Landlord may purchase Environmental Liability insurance for cleanup of environmental accidents on the premises and liability claims for injury caused by such accidents.*
- F. Landlord may elect to carry insurance covering theft of money or other property by employees or others at limits to be selected by the Landlord.*
- G. Landlord may elect to carry insurance for flood, earthquake and other perils not included in the Insurance Services Office form CP 10301000.*
- H. Landlord may elect to carry insurance for equipment breakdown.*

Tenant's Insurance

At all times during the Term of this Lease, Tenant, at its own expense, shall maintain, with insurance companies which are admitted to do business in the State of Michigan and which are rated by A.M. Best "A+" or better, and which are acceptable to the Landlord, the following insurance coverages:

A. Commercial General Liability Insurance

Written on an Occurrence basis, insuring against claims for bodily and personal injury, death and property damage occurring in connection with the use and occupancy of the Premises by Tenant and shall name Landlord and Landlord's managing agent, if any, as additional insureds. The coverage afforded the additional insureds under the Tenant's policy shall be primary insurance. Commercial General Liability Insurance shall afford a limit of at least \$5,000,000 for each occurrence and at least \$5,000,000 General Aggregate.

Defense costs shall be provided and shall be in addition to the limits required.

B. *Workers Compensation Insurance*

Workers Compensation insurance shall meet or exceed the statutory requirements set by the State of Michigan and shall include Employer's Liability insurance. The Employer's Liability insurance shall afford a limit of not less than \$500,000.

C. *Property Insurance*

Insurance against all risks of physical loss for the full value of all personal property and leasehold improvements of Tenant within or outside the Premises and covering at least twelve (12) months of loss of income, continuing expenses and extra expenses.

D. *Environmental Liability Insurance*

Environmental liability insurance for environmental damage to the Premises as well as bodily injury or property damage liability arising out of an environmental event with Landlord as additional insured on a primary basis.

E. *Tenant shall deliver to Landlord prior to occupancy and annually thereafter evidence of this insurance acceptable to Landlord and shall provide notice to Landlord thirty (30) days prior to cancellation or material change.*

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