

**Reconsidering Lease Provisions In Response to Terrorism and Whether The  
Insurance Policies Cover or Exclude Terrorism**

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**I. Insurance coverage for terrorism**

- A. Availability of coverage in flux in 2002
  - 1. Position of National Association of Insurance Commissioners
  - 2. Each state's insurance regulator to review and approve or disapprove any terrorism exclusions filed with such regulators
  - 3. Exclusion for terrorism versus not insuring higher risk locations
- B. Property Insurance Policy Forms
  - 1. Special form or stated peril
    - a. Stated Peril may not include terrorism as a covered peril
  - 2. Rent loss insurance and business interruption insurance available upon occurrence of a covered peril
  - 3. War exclusion not applicable to hijacking or other terrorist acts
  - 4. Definition of terrorism versus vandalism or malicious mischief

## II. Standard Lease provisions being reconsidered

- A. Casualty
  - 1. Is a terrorist act without physical damage a “casualty”?
  - 2. Does the terrorist act trigger a rent abatement?
  - 3. If no insurance for terrorism, any restoration duty?
- B. Covenant of Quiet Enjoyment
  - 1. Is terrorist act a breach of such covenant?
- C. Force Majeure
  - 1. Does force majeure clause excuse action and delay actions of notice and restoration?
- D. Utilities
  - 1. Could terrorist act disrupting utilities triggering rent abatement?
- E. Self-Insurance
  - 1. Captive insurance company as alternative to self-insurance
- F. Operating Expenses/Common Area Maintenance
  - 1. Base year before 2002 does not reflect new security measures and significantly increased insurance premiums
  - 2. What are “reasonable” costs for security and terrorism insurance premiums?
- G. Access rights versus security
  - 1. Do the security measures violate access rights granted in a particular lease?