

Casualty Loss Checklist

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What do you do when the phone rings unbelievably early in the morning and you are faced with the harsh reality that a project you own, operate, lease or manage has suffered from a fire or other casualty? What are the initial areas of concern and how can you diligently focus on the necessary first action steps? The following is intended to provide a helpful, although not exhaustive, guideline to help steer you through such a stressful and uncertain time.

- **Call the insurance provider.** Timely notice of a fire or other event of casualty will be a requirement of the applicable insurance policies. Notify your insurance company or agent immediately to meet this requirement, and also to begin the process of gathering information necessary to submit an insurance claim to help rebuild or restore the premises. The sooner the claim can be submitted, the sooner you may receive insurance proceeds necessary to begin the restoration process.
- **Consult restoration specialist.** Enlisting a proven restoration contractor can be vitally important. They can streamline the process of regaining initial possession by working with fire inspectors or other applicable governing agencies. A flexible and responsive contractor can also help to minimize the overall length of the restoration process with a thorough and timely first response (an example is timely flood response to prevent the onset of mold). Effective restoration contractors also maintain proper communication with insurers to keep restoration efforts on track.
- **Notify all tenants and review leases.** First notify all tenants and, depending on the size of the building, schedule group or individual meetings to inform them of the process. Review all leases, especially with respect to casualty and insurance requirement provisions. You will need to determine quickly if any of your tenants have the right to terminate their lease if certain deadlines are not met with respect to the restoration. For example, some leases will provide that a tenant may terminate if restoration is not commenced or completed within sixty days or one-hundred eighty days from the date of casualty, respectively. Also, rent obligations are often abated, either completely or partially, during the restoration period. It is recommended that you establish a timeline showing relevant dates with respect to any such termination rights and rent. If all of your leases are based on the same form, there should be great overlap from one lease to another. However, if your lease forms have changed over time or if certain big-box tenants required use of their own lease form, you may have varying deadlines to meet with respect to each of your tenants. You will also want to consider what sort of insurance your tenants were required to maintain pursuant to their respective leases. Typical leases require tenants' to insure their own personal property

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and leasehold improvements, and the landlord's insurance carrier and each of the tenant's insurance carriers will hopefully work together to coordinate claims and responsibilities. Finally, you should review any minimum occupancy clauses in your leases. If an anchor tenant can terminate its lease based upon this event of casualty, can any of the other tenants do the same based upon the termination of a certain tenant or the vacancy rate ensuing as a result of a casualty?

- **Notify lender per mortgage requirements and analyze provisions re payment of insurance proceeds.** Depending on the terms of the mortgage, the mortgagee will have great control over how insurance proceeds are applied during the restoration process. Owners hopefully have negotiated for the right to have at least a significant portion of the insurance proceeds promptly applied to restoration before paying down the loan.
- **Work to regain possession of premises as soon as possible.** In the short run, tenants will want access to their premises as soon as possible in order to obtain work product, client lists, files, computer equipment, sensitive materials, etc. Working to gain at least temporary early access for your clients can preserve goodwill. In the long run, the sooner you gain permanent possession to the premises, the better your chances to meet applicable restoration deadlines.
- **Gather all plans and specs and begin contacting contractors for bids to rebuild.** The insurance policy and mortgage will likely have some influence in the extent of permissible modifications to the prior building. The sooner you can get a contractor on board, the sooner plans can be finalized and hopefully the contractor will be prepared to proceed immediately once permanent possession of the premises is regained. It is also important to coordinate build-outs with the tenants. If tenants choose to use landlord's contractor, it will be easier to coordinate tenants' build-outs (the location of walls, utilities, etc.) and both landlord and tenant may enjoy the benefit of certain economies of scale with respect to construction costs.
- **Find temporary space for tenants and assist tenants in notifying their customers about how to reach them during this period.** Assisting tenants in finding temporary space can be of tremendous value to both landlord and the tenant. From the tenants' perspective, they can move into a new location as soon as possible to minimize disruption to their business. From the landlord's perspective, this again can be a source of goodwill and also allows the landlord to help steer tenants to locations that would be fine temporarily but aren't necessarily ideal for tenant's long-term plans. The last thing a landlord wants is to have tenants looking for a new permanent home. If you can find them good, temporary space, they are more likely to return. Additionally, assisting tenants in notifying their customers about how to reach them following the casualty can be a simple gesture that provides significant benefit to the tenants. These are areas where great value can be added by property managers and brokers.

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- **Identify when rent is to re-commence following delivery of the restored premises.** Property managers and landlords should identify when rent re-commences following the delivery of the restored premises to a tenant. This is another critical item to be included on the timeline described above as there is substantial interplay between when mortgage payments are due, when insurance proceeds stop being paid and when tenant rent starts rolling back in. You are likely familiar with negotiated free rent periods to allow tenants a period to fixture their premises prior to rent commencement. However, many leases are silent as to what happens when re-building is complete but the tenant has not yet re- fixtures to allow business to resume. If silent, the parties may need to discuss when rent must re-commence so as to preserve the financial viability of all involved.

This checklist, while hopefully never needed, may be a useful guideline to help navigate you through a period of great uncertainty. Remember, when dealing with landlord-tenant issues following an event of casualty, timely communication is the key to preserving relationships and minimizing the negative impacts caused by the casualty.

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