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Commercial property owners, you better check your “No Vacancy” sign - by Spencer Macalaster

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As employers continue to review their return-to-office plans in the midst of the various COVID variants and 'breakthrough' infections, remote working and hybrid office models, owners and lessors of real estate need to also be reminded of the impact that 'vacancy' clauses can have on their property insurance policy.

Essentially every commercial property policy contains some version of a "vacancy" clause that can severely limit coverage at the time of a loss. Most commercial policies consider a property as 'vacant unless at least 31% of its total square footage is rented to a lessee and used for customary operations and/or used by the building owner to conduct customary operations.'

The words '...to conduct customary operations' have been debated in courts before with a variety of rulings on exactly what those words mean. But in most cases if a property has been 'vacant' for more than 60 consecutive days before a loss occurs, policies will not pay for loss or damage caused by:

- Vandalism
- Sprinkler leakage (unless protected against freezing)
- Water damage
- Glass breakage
- Theft or attempted theft.

Other 'causes of loss' not listed here, could also reduce the amount Insurance carriers would otherwise pay for a property loss by 15%, if the property was deemed 'vacant' by the carrier.

Since the onset of the pandemic, commercial insurance carriers have expressed varying positions on how they planned to handle losses where 'vacancy' was a factor. Some carriers have expressed they would not penalize insureds due to the vacancy clause while others preferred not to comment as to their stance on potential vacant property losses during the pandemic.

All property policies should be reviewed closely to determine how restrictive the vacancy clause may be, as the potential for and uninsured or underinsured property loss can be significant. When necessary, negotiating a 'vacancy permit' endorsement into a commercial property policy can be a good solution to avoid such losses. These endorsements need to be crafted carefully and reviewed closely before being added to a policy. If a particular underwriter will not add a 'vacant' building to a policy, there are alternatives for placement of coverage. In addition, even changes in the type of occupancy of a building should be discussed and reviewed with your insurance representatives. Property owners should work with their insurance advisor and property Insurance carrier to have this conversation and adjust coverage as necessary, before the unexpected loss becomes a reality.

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