

Dealing with Tenant Buildouts

New tenants often require that their premises be built out to their specifications.

There are two ways to handle tenant buildouts:

- The landlord's contractor does the buildout according to plans and specifications approved by the tenant.
- The tenant's contractor does the buildout, sometimes with a tenant improvement allowance provided by the landlord.

The landlord generally has these concerns:

- The quality of the buildout must meet the building's standards. Otherwise, the building's prestige (and ability to command rents) may be compromised. Furthermore, after the lease ends, high-quality space might be re-leasable without remodeling.
- The contractor must avoid disturbing other tenants and monopolizing elevators and other common spaces.
- The building must be kept free of construction liens. Under Wisconsin law, a construction lien for tenant improvements is a lien against the entire building, not just the leased premises.

The easiest way to avoid these problems is to have the landlord's contractor do the buildout. That way, the landlord controls the construction process.

If the tenant insists on using its contractor, the landlord can protect itself by taking one or more of these steps:

- Requiring the tenant to obtain the landlord's approval of all contractors, suppliers, plans, specifications and construction contracts.
- Monitoring the work as it is performed to make sure it conforms to the approved plans and specifications. The landlord may want to hire an independent inspector to do this.
- Requiring the tenant to indemnify the landlord against construction liens for the buildout. Remember, though, that an indemnification is only as strong as the tenant's liquid net worth.
- Requiring the tenant to obtain a payment bond or letter of credit to ensure that all contractors and suppliers are paid in full.
- Requiring that the funds necessary to pay the contractors and suppliers be escrowed with the landlord or with a title company. The funds would be

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released only as the contractors and suppliers provide lien waivers for the work performed.

- Requiring that all contractors waive their lien rights before they can come onto the premises. Although contractors do not like to waive their lien rights, the dearth of construction work in today's tough economic climate may provide landlords sufficient leverage to demand such waivers.

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