

"Does a Tenant Ever Need Title Insurance?"

Yes, there are several situations in which it would be prudent for a tenant to obtain a leasehold title insurance policy. Generally, if a tenant is to use its own funds to improve real estate, the tenant may want to purchase leasehold title insurance to cover the risk of the Landlord's loss of title. A couple of examples illustrate the need.

First, if a tenant ground leases land from its landlord and intends to build a building on the parcel, the tenant would want a leasehold title policy much the same as an owner of a parcel would want title insurance when it purchases an improved parcel. In that situation, if the tenant is financing that construction, the tenant's lender will certainly also want a leasehold lender's title insurance policy to protect its interest.

A second example is where a tenant may be using its own funds to improve the landlord's real estate. For example, if a tenant is providing \$2 million of its own money to improve its offices, it may be prudent for the tenant to obtain leasehold title insurance.

When a tenant obtains leasehold title insurance coverage, it comes in the form of a typical title insurance policy with a leasehold endorsement providing the coverage for the leasehold interest. This means that the initial title insurance commitment must be reviewed and negotiated in the same manner as if an owner were buying a piece of real estate. Matters that are noted as exceptions to the title insurance policy will not be insured over.

In the second example noted above, if a tenant is using its own funds to improve its offices, the title insurance commitment will be subject to any mortgages that the landlord may have against the office building. This means that, unless the tenant obtains a nondisturbance agreement from the underlying lender, if the mortgage is foreclosed, the tenant could lose its lease, and thus the \$2 million of leasehold improvements it has invested in the building.

As with other title insurance policies, if there are title defects that are not noted in the title insurance, the policy will cover the tenant's loss up to the lesser of the value of those improvements, plus certain other expenses, or the policy limits if the tenant is evicted due to a non-disclosed title defect.

In the situations noted above, it is frequently prudent for a tenant to obtain

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leasehold title insurance. As with owner's policies, however, the tenant must make sure that it examines and negotiates the title insurance commitment so that the final title insurance policy and leasehold endorsement provide the coverage that the tenant needs.

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