

REAL ESTATE BRIEFS

TOPICS & TRENDS AFFECTING REAL ESTATE

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SHOPPING MALLS PRESENT UNIQUE INSURANCE CHALLENGES

Shopping malls differ from other types of real estate in several respects, each of which carries its own special insurance requirements.

- (1) Impact of anchor stores on strip stores
- (2) Ownership of tenant improvements
- (3) Building code changes
- (4) Replacement site options

Standard insurance policies fail to address these issues adequately and in some cases deliberately omit coverages. For each situation listed above there are custom clauses available; to wit:

1. When purchasing Rents coverage the owner usually includes Base Rents as well as Overages plus CAM pool charges. However, if the small stores rely heavily on consumer traffic generated by the anchors there could be a significant uninsured risk. Consider the case of McCrory's in Walt Whitman Center (Long Island, New York). This anchor was almost totally destroyed by fire resulting in a drop-off in traffic in the surrounding stores which did not suffer any physical loss or damage.

Solution: A Contingent Rents endorsement which provided coverage for a loss in percentage rents caused by a loss to an anchor.

2. Leases often vest title to Improvements and Betterments to tenants and this provision can cause problems after a fire when tenants exercise their cancellation rights.

Solution: Insert a clause, which for insurance purposes, deems these improvements the Landlord's property.

3. Building code changes are almost never enforced retroactively. Hence, non-conforming uses are generally tolerated. However, after major fire damage the local authorities may well require total compliance involving expensive retrofitting. Unfortunately, standard insurance clauses (even at replacement cost) specify the use only of like materials and workmanship - precluding the cost of code compliance.

Solution: Require the insurer to provide coverage for increased costs of demolition due to enforcement of building codes.

4. The demographics of the retail mall's competitive situation may have changed dramatically since the property was first built or acquired. A major fire destroys the property, and the owner can only collect replacement cost if the center is rebuilt on the same site.

Solution: Broaden this provision to include "the same or any site."

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