

professional services

ps

Naming an additional insured on a tenant insurance policy reduces exposures for owners and managers

jh John Hardy



Cook, Hall & Hyde, Inc.

While seasoned property owners and managers take great care in screening potential tenants for their commercial/industrial properties, they are less contentious about taking measures that will protect them from liabilities that their tenants may pose. It is conceivable that a tenant's business practices, seemingly innocuous acts or negligence could result in financial loss to an unprotected owner or manager. One of the best ways to mitigate these exposures is for property owners and managers to be named as additional insureds on their tenants' insurance policies. Understanding where the risks lie and how to gain this protection is critical.

Tenant-Related Exposures

Tenant negligence is a common risk to property owners/managers. For example, let's say a tenant is obligated but fails to remove ice from the parking lot and someone falls and sustains an injury. The building owner could be enjoined in a law suit even though the ice/snow removal was the tenant's responsibility. However, if the landlord is named as an additional insured on the tenant's liability insurance, they will avoid having to defend the claim through their own insurance, or worse, having to pay for an attorney out of their own pocket.

Another common risk to property owners/managers is when tenants make structural improvements to their leased premises. If the lease language is silent on the repair or replacement of such improvements, the tenant could look to the landlord for satisfying these needs. However, if the property owner is named as a loss payee on the tenant's property insurance, which often covers leasehold improvements made by tenants, and the improvements are insured by the tenant, this risk can be avoided.

Using the Right

Endorsement and Language

The Additional Insured-Managers or Lessors of Premises (CG 20 11) endorsement is the primary form used to add a property owner as an additional insured on a tenant policy. This endorsement also can be used to provide insured status to the property owner's real estate manager. It is important that a clear description of the leased premises be included in the endorsement's wording. For example, if the tenant leases a building as well as the perimeter parking area, a thorough description of both of these areas should

be included. If the tenant leases a particular floor, but has access to the building's basement, storage rooms or there are other areas that the tenant is required to maintain, it is imperative that a descriptive statement specifying and detailing these areas be incorporated into the additional insured endorsement.

Setting the

Right Liability Limit

Questions often arise as to how much coverage a property owner should require of a tenant. To establish the right liability limit, property owners need to consider such factors as: the amount of space occupied by the tenant, the nature of the tenant's business and the scope of the tenant's responsibility in maintaining the premises. A good rule of thumb is the tenant should provide a minimum of \$1 million in liability. However, if

the landlord carries limits of coverage well in excess of this amount, it's fair to expect the tenant to meet

However, a tenant would incur a higher premium if the limits of liability required by the landlord exceeded

agreement. The specific and complete wording for the additional insured endorsement should be included in

Tenant negligence is a common risk to property owners/managers. For example, let's say a tenant is obligated but fails to remove ice from the parking lot and someone falls and sustains an injury. The building owner could be enjoined in a law suit even though the ice/snow removal was the tenant's responsibility. However, if the landlord is named as an additional insured on the tenant's liability insurance, they will avoid having to defend the claim through their own insurance, or worse, having to pay for an attorney out of their own pocket.

the landlord half-way by securing an umbrella liability policy with limits of \$5 million or more.

Costs and Consequences

Most insurance companies provide additional insured endorsements at no additional cost to the policyholder.

the limits the tenant would otherwise have purchased.

To avoid any negative impacts on the relationship between property owners, managers and their tenants, it is advisable that coverage be addressed during negotiation of the lease

the lease agreement prior to the tenant taking occupancy of the space.

John Hardy is managing director of Cook, Hall & Hyde, Inc., Melville, N.Y.

Is the R.E. bubble bursting? Impending boom & tactics for success in stormy times

js Josh Slaybaugh



Trade Up 1031

Your daily newspaper, local news, and national media have all said it. Economic pundits, financial gurus, and governmental officials have expressed concern. Are the glory days of investing in real estate coming to an end? Have we been caught up in another short-term boom without realizing it was nothing more than a bubble ready to pop? Many believe that the anemic residential housing market and sub-prime crisis is just the start of a sustained lull in real estate investing. But others feel there is no better time to consider investing in real estate than right now. So, who's correct?

There is no doubt that the second and third quarters of 2007 will be remembered as the worst in over five years for much of the real estate sector. The Dow Jones REIT index dropped almost 26% between February and August. The Housing Sector Index (HGXI), an index composed of 20 companies whose primary lines of business are directly associated with the U.S. housing construction market, dropped 34% over the same time period.

But are these statistics a forecast of what is to come, or will 2007 be remembered as nothing more than a blip on the real estate radar screen? Many studies have concluded the latter. In fact, the future of real

estate is so bright that we might look back on 2007 as the start of one of the greatest real estate booms in history.

The Brookings Institute, the prominent Washington, D.C.-based public policy think tank, recently published a research report stating that in the year 2030 almost 50% of the buildings in which Americans live, work, and shop will have been constructed since the year 2000. This mega-expansion will give the current generation a vital opportunity to reshape future trends. The study goes on to say "recent trends indicate that demand is increasing for more compact, walkable, and high-quality living, entertainment, and work environments." This means that the concrete-block apartment complexes built in the '60s and '70s, for example, will quickly become a thing of the past, ultimately replaced by high-end developments promoting green spaces, and attractive, upscale housing close to suburban and metro areas.

So what does this mean for the Main St. investor? Firstly, real estate investment opportunities such as REIT's, LLC's, securitized notes, and tenant-in-common (TIC) interests aren't going away. Based on these current market conditions, these investments will only grow more attractive to investors in the years to come as opportunities to participate in this construction and expansion will abound. Secondly, real estate investments must become part of every investor's diversified portfolio. Time and time again, a diversification approach to investing has proven to outperform all other strategies.

The real question an investor should be asking themselves is not

"should I invest in real estate?," but "where should I invest in real estate?" It boils down to the old real estate adage, "location, location, location." Where are the places in the country that are set for expansion over the next quarter of a century? Where will population growth occur?

According to a 2006 U.S. Census Bureau report, over 88% of the nation's population growth over the next 25 years will occur in two regions: the south and west. As empty nesters consider downsizing, active seniors will escape the burdens of home ownership by moving to multifamily housing such as condos and townhomes in Florida, Arizona, and the Carolinas. As echo boomers (ages 13-25) leave the nest or graduate from college the housing market in the south and west will benefit. Cities like Charlotte, N.C., a hotbed for the financial and pharmaceutical sectors are now competing with N.Y., Chicago, and Los Angeles as a viable and a more attractive alternative for college grads entering the work force. This means more apartments, more condos, and more single-family homes. Baby-boomers entering their 60s and 70s will strain America's healthcare resources. Medical office buildings, hospitals, and assisted living facilities will need to be built to fulfill this demand.

What can the average investor do to take advantage of these demographic shifts? Well, lucky for us many of the top real estate investment firms are already acting on these trends. Investment vehicles such as REITs focusing specifically on apartments and healthcare facilities are already flooding the market. Sponsors of TIC have already re-focused their acquisi-

tion strategies to acquire buildings in these growing areas of the country, thus giving property owners wishing to sell their investment and commercial property the opportunity to diversify their sale proceeds into a very attractive portfolio of TIC properties.

All arrows point in the direction of positive growth in the real estate market in the years to come. Of course, the real trick for the average investor will be to determine how to invest in the path of progress most effectively. My suggestion: Consider demographics when making investment decisions. Demographic investing is one of the most effective ways to evaluate your investment choices. The June 25 edition of *FORTUNE* said that "Patiently investing in long-term demographic trends will set up your portfolio for supergrowth."

"Supergrowth" may be a tough term to define, but what should be obvious is that basing investment decisions on the goods and services that the country's largest population groups are most likely to consume over time in the regions experiencing the greatest growth just makes sense.

When it comes to demographic investing, investors need to ask themselves three basic questions: Who? What? Where? Who are the dominant population groups? What are the essential needs of each group? Where are these groups living, working, and moving? Find the answers to these questions and you'll be well ahead of the game.

Josh Slaybaugh is president of Trade Up 1031, West Chester, Penn.