



Emerging Issue

The Often Overlooked Vacancy Clause in Property Insurance

In the past, focus directed at a property insurance vacancy clause was a rare occurrence. But as much has changed in the world since the spread of COVID-19, the insurance industry has certainly been affected in many ways as well.

Insurance clauses that were once frequently overlooked are now gaining prominent attention. If someone was not aware that a property insurance policy required physical damage to occur to trigger a claim, such lack of knowledge has likely been eviscerated by the unending stream of e-mails, published articles, and social media posts on the subject. Anyone who never heard of the term “business interruption” before may now be able to explain it in great detail. Nevertheless, some lesser known coverages and clauses in insurance policies, even by insurance professionals, may now be gaining attention due to the current circumstances the pandemic has wrought upon us.

ISO Vacancy Clause

One such clause often found in commercial property insurance policies is the vacancy clause.

For Tenants:

Although it can vary by policy, when issued for an insured tenant, the standard ISO (Insurance Services Office – an organization that develops a majority of the standard insurance policy forms) vacancy clause stipulates that the space leased to a tenant is deemed vacant when it does not contain enough business personal property to conduct normal operations.

For Owners:

When the policy has been issued to the owner or the general lessee of a building, the building is vacant unless at least 31% of its total square footage is either rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations and/or used by the building owner to conduct customary operations.

A building under construction or renovation is not considered vacant under the ISO policy form.

ISO Vacancy Clause Requirements

It is important to note that the vacancy limitation applies only when a building has been damaged or destroyed and the building was vacant for more than 60 days prior to the occurrence. In that event, the vacancy clause will kick in and the insurance carrier will not pay for any loss or damage caused by any of the following (even if they are covered causes of loss):

- Vandalism
- Sprinkler leakage (unless the insured has protected the system against freezing)
- Building glass breakage
- Water damage
- Theft
- Attempted theft

If the building has been damaged by a covered cause of loss other than those listed above, the insurer will reduce the amount it would otherwise pay for the loss or damage by 15%.

What To Do If Vacancy Clause Is Triggered

If there is concern that the vacancy clause will be triggered, not all is lost. There are two policy endorsements that address the vacancy issue and can amend the policy wording in favor of the policyholder, subject to an underwriter's agreement to add the endorsement mid-term. Given the extraordinary times we currently find ourselves in, underwriters generally have been accommodating and willing to work with insureds to avoid triggering the vacancy clause.

For More Information

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