



Keeping Pace with Evolving Risks in Real Estate

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Domestic and global factors are driving a resurgence in U.S. real estate that marks a sharp rebound from the lows of the financial crisis. Office markets in U.S. urban areas have seen strong growth in the amount of occupied space as vacancy rates trend lower and rents move higher.¹ In addition to local demand, foreign investment has been pouring into the U.S. real estate market. Investment from China, for instance, has grown from a relatively small amount in 2010 to a major force in all sectors of the U.S. real estate market, including residential.² The pace of construction in the U.S. multifamily market remains brisk, with the number of units under construction hitting the highest level since 1974.



Markets, however, are always in flux, and emerging trends can cause broad changes. In the office market, for instance, many corporations are consolidating more employees at larger locations while eliminating smaller offices.³ In changing markets, one constant factor is the need for proactive risk management that can include insurance coverage for contractual liability, property, casualty, environmental, cyber and other exposures. To help keep pace with emerging and traditional exposures, here is a look at some of the major risks facing the real estate industry today.

Contractual Liability

Properly written contracts provide crucial protection, particularly when it comes to liability stemming from an accident or security lapse on a site. For instance, New York City's "Sidewalk Law" holds property owners responsible for maintaining the sidewalk in front of their buildings in good repair. The 2003 law came as the city found itself paying out tens of millions of dollars annually to settle lawsuits stemming from slip and fall incidents.⁴ Under the law, property owners may face liability if someone is injured after a vendor fails to perform repair or maintenance - such as clearing ice or snow - as called for in a contract. Those kinds of scenarios hold in other instances as well, such as security vendors for commercial and residential properties. Without a clearly written contract that spells out the scope of work, insurance requirements for the vendor, hold-harmless and indemnification protections for the owner; the property owner may face liability for a vendor's actions or inactions.

Whether the contract is for snow removal, managing parking facilities, maintenance, cleaning or other services, prospective vendors should be thoroughly vetted before they are hired. The background check should include any past non-performance issues, claims or litigation. Property owners should make sure that contractors have the required levels of insurance, and check on a regular basis to ensure coverage is maintained. The contract should require vendors and subcontractors to name the property owner as an additional insured and to provide certificates of insurance on an annual basis.

On vendor contracts, property owners should make sure that all parties agree to the specific expectations, promises and contingencies. Standardized contracts

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that have been tested are preferable to customized ones that are less likely to survive legal challenges. All contracts should be reviewed by legal counsel.

Physical and Cyber Security

Along with exposures linked to maintenance, real estate property owners may be held responsible for keeping their premises properly secured and monitored. That includes parking areas as well as gates and entryways. For large office buildings, property owners may want to keep security guards on site and monitor access by tenants and visitors. Criminal activity that leads to physical injury on residential or other property may also expose a property owner to liability.

Security concerns should extend to cyberspace. Any real estate firm that retains data such as bank account information for residential or commercial tenants runs a risk of cyberattacks that jeopardize personal and confidential information. Property managers relying on direct debits for rental properties may be at a particular risk. To combat cyber risks, companies need to address their computer and network vulnerabilities and provide employee training to guard against “phishing” and other attacks that seek to exploit human vulnerabilities. Fostering a culture of information security across the organization helps provide an effective defense.

Public Slip Trip & Fall

For any property accessible to the public, owners need to take active measures to combat the risk of slip-and-fall incidents that can lead to very significant losses. About 15 percent of all accidental deaths stem from slip-and-fall incidents, second only to motor vehicle accidents.⁵ Keeping sidewalks and walkways clean, well-lighted and clear in inclement weather can help to prevent such accidents.



To minimize the potential for slip-and-fall incidents, the owner’s staff should be alert to problems such as cracked sidewalks, uneven areas in parking lots and raised carpets in lobby areas. Walkways should be smooth but not slippery, and ramps should be slip resistant. For residential properties, the safety of balconies and outdoor patio areas are also important considerations.

Workplace Violence

Incidents of workplace violence remain all too common, and generate intense media coverage. Workplace homicides averaged more than 700 per year from 1992 to 2012, and more than 137,000 workers were treated in emergency wards for nonfatal assaults in 2009.⁶ Whether it’s a co-worker, a former employee, an employee’s spouse, a customer or a trespasser, violence in the workplace remains a key concern.

Adequate security makes a difference. Property owners should consider security personnel along with physical measures such as access control, bright lighting, video monitoring and silent alarms. Other

measures include management training, sound human resources practices and a well-developed security plan. A thorough risk analysis can help companies evaluate their physical security measures, employment practices, customer service procedures as well as procedures for dealing with strangers.

Social media is becoming a more valuable tool in investigating incidents as well as recognizing potential threats. For properties located in areas where large protests may be held, companies should develop protocols to help protect employees and customers from issues such as “flash mobs” that may arise.

Water Damage & Mitigation

For building owners, and their tenants, water damage presents a significant and frequent risk. To protect their properties, owners should conduct a water damage risk assessment to identify and mitigate potential sources of water damage. In addition to routine inspections of the building and its systems, a regular preventive maintenance schedule should be followed.

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Environmental Exposures

In addition to water intrusion leading to property claims, it can also lead to mold which may not be covered under a standard property policy. A mold condition may necessitate shutting down an entire building, or a large portion of it and may entail not only the expense of remediation but also business interruption. Damages in cases involving the extended shut down of a luxury apartment complex for mold remediation and reconstruction may run into the tens of millions of dollars. Residents or employees who claim health issues related to mold may seek to hold the property owner liable. Preventive maintenance and routine inspection of building systems including roofs, windows and HVAC components can help identify and prevent chronic moisture conditions or water intrusion that can lead to mold.

Fuel storage tanks may pose another significant environmental risk. For instance, a line failure at an apartment maintenance garage that released thousands of gallons of gasoline contaminated soils and groundwater offsite, required test bores and air monitoring as well as extensive remediation. Improper storage of bulk cleaning products and chemicals can pose contamination risks to the building and ventilation systems. Storage and disposal of wastes such as used oil and refrigerants may lead to environmental exposures.

Companies that are considering acquiring existing properties should investigate whether those sites involve any legacy environmental or pollution problems associated with their prior use.

Multi-family properties may be at heightened risk of water damage because of the higher number of bathrooms, kitchens and hot water storage tanks. Older sewerage systems can be more susceptible to backups and clogs that lead to water damage.

Besides plumbing, water damage often stems from leaks in roofs, improperly sealed openings for doors, windows and ductwork, or seepage through foundations. Exterior insulation finish systems can be highly susceptible to water intrusion.

Floodwaters can and do cause major damage. Property owners should evaluate their properties for flood risk and take steps to guard against flood damage as well as that from other natural hazards such as wind storms and earthquakes. Staging emergency preparedness kits for flood or spill control in critical locations can help reduce the potential damage. Other measures may include permanent and contingent flood control measures.

Sprinklers, while a critical building component for life safety and property protection, are a key water damage culprit. Working with sprinkler contractors to ensure water pressure is not set too high that it can result in leaks is a first step in mitigating water damage. Another critical step is to look for water damage on suspended ceiling tiles, and quickly address when noticed. Finally, if there are unoccupied areas of the building, owners should ensure they continue to be part of the regular inspection schedule for signs of water leakage, and to make sure the heat in these areas is maintained to assist in the prevention of sprinkler pipe freezing.

To minimize potential damage, property owners should have a water intrusion response plan that includes steps to locate and isolate leaks, relocate personnel and protect furnishings and equipment. Leak detection systems can also help to limit water damage.

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A Holistic Approach to Risk Management

As businesses providing housing and work spaces for the public, the real estate industry faces a particularly wide variety of risks, some of which may be underestimated or even unrecognized. A comprehensive approach to risk management and risk transfer can help companies address and mitigate these exposures.

Coverage considerations should include accident and health, primary and excess casualty for contractual liabilities, property coverage for water damage and mitigation, and environmental coverage that addresses exposures ranging from chemical releases to oil leaks, mold and bacterial infections. For cyber and privacy risks, companies should consider errors and omissions coverage along with dedicated privacy and network security

coverage. Transactional risk coverage can help to offset exposures arising out of mergers and acquisitions.

To address this wide array of risks, property owners should consider working with an insurer with recognized financial strength that has expertise in the real estate industry. An insurer that offers comprehensive coverages with risk engineering and claims services can help companies make sure their risk management strategy keeps pace with their changing exposures. As U.S. real estate companies also venture abroad, an insurer that has worldwide experience and relationships can help them navigate the risks of new markets. Because real estate markets are always changing, the industry must deal with constantly evolving risks. A holistic approach to risk management can help meet those challenges.

Endnotes

¹ Office property market posts strong first-quarter growth, Wall Street Journal, April 3, 2016, see: <http://www.wsj.com/articles/office-property-market-posts-strong-first-quarter-growth-1459740601>

² Chinese pull back from U.S. property investment, Wall Street Journal, Nov. 27, 2015, see: <http://www.wsj.com/articles/chinese-pull-back-from-u-s-property-investments-1448649226>

³ Office property market posts strong first-quarter growth, Wall Street Journal, April 3, 2016

⁴ Your Home; Sidewalk liability hits home, New York Times, Oct. 5, 2003, see: <http://www.nytimes.com/2003/10/05/realestate/your-home-sidewalk-liability-hits-home.html>

⁵ Walking/Working Surfaces, Occupational Safety and Health Administration, see: <https://www.osha.gov/SLTC/walkingworkingsurfaces/>

⁶ Occupational Violence, National Institute for Occupational Safety and Health, July 7, 2014, see: <http://www.cdc.gov/niosh/topics/violence/>



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