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What Landlords Need to Know

NY LABOR LAW

PROTECT YOURSELF AGAINST UNFORSEEN RISK

As a landlord, you may face risks that you are not aware of. This is particularly true in New York State as a result of the New York Labor Law. The New York Labor Law (the Scaffold Law) was enacted in order to provide protection that might not otherwise be available to workers in construction, demolition and renovation projects. These statutes, and in particular Section 240(1), can and often do impose liability on property owners when an accident occurs. The property owner may not be at fault. New York Labor Law Sections 200, 240 and 241 impose a critical duty on the owners of a property where construction is taking place to provide a safe workplace during the construction process. These laws are complex, and impose strict liability upon landlords (without regard to fault) to certain injuries when working from heights and engaged in certain hazardous work (Section 240), and may impose comparative liability with respect to other safety related injuries from an unsafe work environment (Sections 200 and 241).

Obviously, you need to keep your premises free from hazard, such as uneven walking areas, dim lighting (work areas particularly need to be well lit and free from debris), etc. In addition, it is very important to have properly written and comprehensive leases for all tenants with the appropriate legal language to protect your rights. When looking to make improvements and betterments to your property, make sure you select reputable contractors, with a detailed written contract with the contractor. Before signing the contract read it thoroughly including the clause that will hold you harmless for accidents arising out of their actions. Be sure to verify the contractor has appropriate insurance without exclusions that will leave you exposed to liability.

As a commercial property landlord, it is important that you have proper legal counsel to advise you on leases and contracts. A property owner that has failed to protect itself with appropriate language in leases or construction contracts, or hiring contactors with out adequate insurance coverage will more likely than not result in the landlord as the liable party in a case where it otherwise could have avoided liability entirely.

Tips:

- Have a written lease agreement that requires your tenants to hold you harmless to the extent permitted by law for accidents arising out of their use and occupancy of the premises. For example, if your tenant hires a contractor, the lease needs to be specific that your tenant is responsible for the actions of the contractor (to the extent permitted by law). Consult with your attorney about including a proper indemnification clause in your leases.

- The lease should have an insurance procurement clause which among other things would require your commercial tenants to maintain liability coverage, have you named as an additional insured on their insurance policy, and provide you with a Certificate of Insurance annually.

- Ensure that your commercial tenant's insurance policy (or any policies for contractors hired by your tenants) does not have insurance exclusions such as employee or an independent contractor or subcontractor exclusions that will expose you to unintended liability. If the contractor(s) or tenant has these exclusions, what should be a simple and normal tender to the contractor's insurance carrier is denied by their carrier, leaving the landlord as the primary liable party.

Tips for dealing with contractors:

Hire only competent and reputable contractors. Make sure they hold the required licenses to do the work. Ask for and check their references. Require your tenants to do the same when they hire contractors and that you both are named as an additional insured on the contractor's insurance.

Have a written contract with the contractor and ensure that the contract has a Hold Harmless Agreement in your favor to the extent permitted by law making the contractor responsible to pay for any bodily injury, property damage or other economic loss resulting from their or their subcontractor's work.

Require a Certificate of Insurance to verify that they are maintaining general liability and workers' compensation insurance. The contractor's general liability limits should be equal to $1,000,000 or more. When hiring a contractor for any project (other than routine maintenance) you should require that your contractor name you as an additional insured on their policies (this should include any subcontractors they may use).

Ensure that the contractor's insurance policy does not have any exclusions such as employee or independent contractor or subcontractor exclusions.

Situations that can increase your liability:

- Not having a written lease.
- Sealing a deal with a contractor with a handshake rather than a written contract.
- Having leases or construction contracts without proper risk transfer language.
- Not being named as an additional insured on a tenant's insurance policy or a contractor's insurance policy.
- Assuming the contractor has insurance – get a certificate and policy before the work starts, and make sure they do not have employee or independent contractor or subcontractor exclusions.

As a real estate investor or professional, it is a preferred practice to consult with an attorney when entering into leases or contracts. They should be knowledgeable of sample clauses such as an "Indemnification Clause", "Hold Harmless Agreement," and/or an "Insurance Procurement Clause" in a lease, and protective clauses to be inserted in agreements between owners or tenant and a contractor. You can visit www.AIA.org as a resource for forms of contracts and sample language to incorporate in your leases and contracts.