

REAL ESTATE

A Tenant's Insurance Policy Doesn't Necessarily Protect The Property Owner

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Most leases require the tenant to maintain liability insurance, which covers the risk that someone gets hurt on the property and sues. Because that injured person will probably sue both the tenant and the property owner, leases typically require the tenant's insurance to name the landlord as an "additional insured." That way, the insurance company will have an obligation to protect both the tenant and the property owner when the litigation begins.

All of that should give the property owner comfort. But the comfort is not complete, as demonstrated yet again in [a recent New York case](#). There, someone tripped and fell on the sidewalk. They sued both the tenant and the property owner. The property owner was named as an additional insured on the tenant's insurance policy and asked the tenant's insurance company to deal with the litigation.

The tenant's insurance company denied coverage to the property owner. The company stated that a liability insurance policy covers an "additional insured" only if the liability arises from the negligence of the

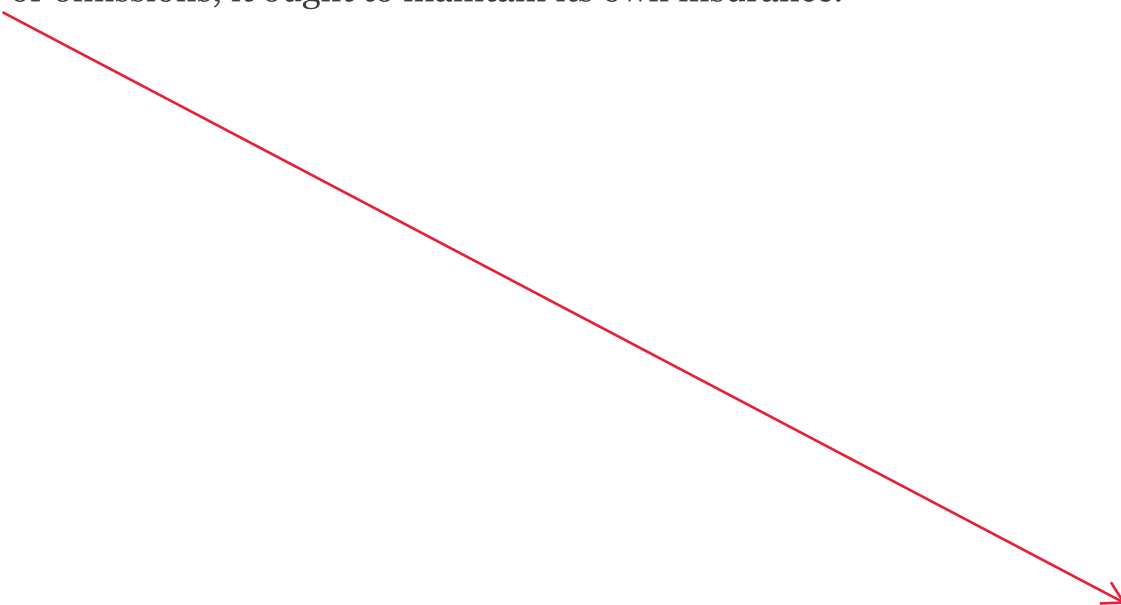
policyholder, in this case the tenant. If the tenant were responsible for maintaining the sidewalk and negligently failed to do so, then the insurance company would have covered both the tenant and the property owner.

In this case, however, the tenant clearly had no responsibility for the sidewalk, so could not have been negligent in maintaining it. The only possible negligent party was the property owner, who was legally responsible for maintaining the sidewalk. Thus, the property owner received no benefit in this particular litigation by being named as an additional insured on the tenant's liability policy.

The case teaches many familiar lessons.

First, the world of insurance is full of surprises, generally involving differences between the actual coverage provided and the coverage that one might assume is provided. Those differences and the surprises they produce are generally unpleasant.

Second, even if a property owner requires a tenant to maintain liability insurance, that coverage probably won't protect the owner against liability for its own negligence. Thus, if any conceivable basis exists on which an owner might have exposure to liability based on its own actions or omissions, it ought to maintain its own insurance.



Third, because the world of insurance is full of surprises, an owner probably ought to maintain its own backup liability insurance, even if it thinks no possible basis exists on which it might be deemed negligent because of its own actions or omissions.

Fourth, a property owner should understand the allocation of risks and responsibilities in its leases, and plan its insurance program accordingly. In the New York case discussed above, the lease made the tenant responsible for its own premises, but not for the sidewalk. The owner remained responsible for the sidewalk, and that's where the accident happened. As a result, the property owner could not rely on the tenant's insurance policy, even though the owner was an additional insured on that policy.



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I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**

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