

Expert Analysis

# Storm Insurance Considerations For Cos. New To Florida

By Philippe Lieberman and Marko Cerenko

The business and wealth migration to the Sunshine State has never been more prominent.

According to data from the U.S. [Census Bureau](#), Florida saw twice as many new businesses setting up shop compared to the Northeast in 2021 alone. While there has been an uptick in storms in the Northeast over the last few years, it is certainly not to the level we are accustomed to in Florida.

All companies relocating to Florida should be aware of some of the potential risks that could stem from a storm disrupting their business, such as damage to their property and associated interruption of business, and issues that can arise with anticipated insurance payout.

Just because one has a million dollars of coverage and a million dollars of property damage, it does not necessarily mean that an insurer will pay a million dollars to cover a loss.

Although the risk of storms effects all business owners, there are some special matters that commercial property owners and tenants should consider. Indeed, all leases and real estate contracts should carefully consider the risks of property damage from a storm and expressly allocate the risks between the parties.

Here are some matters that commercial property owners and tenants should consider:

## Assigning Responsibility

The first step in hurricane preparation is to clearly detail the landlord's and tenant's respective obligations and responsibilities.

For example, it is important to include who will be responsible for protecting the property from damage and flying debris ahead of the storm, who will be responsible for the cleanup after the storm, who is responsible for obtaining property insurance, and who will be the named insureds.



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It is also important to state how much insurance is necessary and what deductibles are appropriate for the associated risk. Additionally, leases should also include what type of mitigation efforts need to be undertaken after the storm that do not interfere with insurance companies' inspection rights.

These are all questions that need to be considered when outlining each parties' respective obligations.

### **Preparing for Unforeseen Events**

Mandatory evacuation orders and other unforeseen events should also be addressed. For example, under what circumstances can landlords prevent tenants access to the property after the storm? What if building inspectors condemn part or all the property after a storm? Life safety concerns, in addition to liability concerns, should be considered.

### **Coinsurance Provisions**

Parties must have a clear understanding of who is responsible to obtain proper insurance, the type of insurance coverage to obtain, the amount of coverage, the deductible and the named insureds.

Simply getting insurance from a reputable insurer may not be sufficient. Most commercial insurance policies contain coinsurance provisions, which are designed to encourage policyholders to insure properties to a certain percentage, usually 80%-90%, of the properties' true value.

If the amount of insurance is found to be under the coinsurance percentage or underinsured, then a penalty is applied, which reduces the payout at the time of loss. If there is underinsurance, there could be increased risk of litigation with the insurer over the insurance payout, and litigation between landlord and tenant over the responsible party to cover any shortfall.

A full understanding of coinsurance provisions is especially important in Florida because of rising property values in South Florida, and the increased costs of repair and reconstruction due to inflationary factors. Indeed, we expect litigation over coinsurance provisions to be especially prevalent after the next storm as a result of the Florida market conditions.

### **Rent Responsibilities and Lease Termination Rights**

Landlords and tenants should also consider the parties' responsibilities after the storm.

For example, who is responsible to undertake and pay for costly cleanup and repairs after the storm? Is the tenant responsible for payment of full rent during the period of repairs? Can the tenant obtain a full or partial rent abatement, or potentially terminate the lease? What if the property suffered great damage, or if the repairs will be lengthy and burdensome, or if the leased premises survive but not the surrounding property, like in the case of a shopping center?

The answer to some or all of these questions will depend on the lease terms, the type of damage, and the cost and length of repairs. The parties should carefully and clearly allocate the risks and obligations between them. These things should be spelled out in the lease and careful attention should be given to the force majeure provision, which often addresses disruptive events that are beyond the parties' control.

### **Restoration Requirements**

If the lease is to continue, the parties should consider the requirements for restoration of the property. For example, who is in charge of restoration, how quickly must it be done and what if the property cannot be restored to its original state? What if there are new code requirements?

### **Businesses Must Be Prepared**

The more specific you are in a contract, the better prepared you are to avoid unwanted litigation. Be clear of the parties' rights and obligations, have a concrete storm preparation plan, and communicate with each other before and after the storm.

We often see businesses moving down to Florida who rush to get deals or leases done and end up with litigation down the road because their expectations did not match their contractual obligations. Reviewing your contracts upfront is key.

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