

ViewPoints: Your Guide to Covering For TRIA Loss

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As news reports have widely circulated, the Terrorism Risk Insurance Act, better known as TRIA, is about to expire in December of this year, and the overwhelming likelihood is that it will not be renewed. The US Treasury Department report on June 30 took a position against TRIA's extension and, since the leadership of Congress is also opposed to further extending TRIA, there is widespread belief in Washington that the law will simply fade into the sunset.

Most readers know that TRIA was enacted by Congress in 2002 as a safety net, guaranteeing that commercial property insurance providers would be obligated to offer terrorism insurance coverage to their customers. The belief was that without it, they would be reluctant to otherwise make such coverage available. TRIA was a three-year temporary program by design. But now opposition to TRIA has focused principally upon the belief that government should not be involved in the insurance business, and that in fact government inaction on terrorism insurance may act to encourage insurers to "step up to the plate" and offer the coverage on their own. In addition, Congressional leadership believes that terrorism is a problem of a few major cities but not a nationwide problem.

With TRIA's backstop capacity absent, property insurers will either be unwilling to offer terrorism coverage at all in major vulnerability locations (i.e., New York City, Washington DC, Chicago, San Francisco) or will significantly increase the already high cost of a terrorism rider. The stream has already started to flow in this direction, as reports show that policies being promulgated now are excluding terrorism coverage.

Commercial property owners, nevertheless, have obligations to lenders and ground-lessors to provide insurance for fire and terrorism—courts have ruled that agreements and leases entered into before September 2001 that simply required fire insurance to protect the lender and/or owner automatically include fire as the result of a terrorist act. Property owners are clearly up against the wall since they must now "pay the price" to get the coverage. The insurance industry is well aware of this fact.

Insurance rates are going to go up, but property owners need to minimize the increase as much as possible. Specifically, they can engage in a concerted risk-management program using a respected risk analysis security firm to conduct liability assessments for "high-risk" properties. By acting on the risk management assessment recommendations and making security improvement measures, owners and insureds will be able to make their case to insurance carriers for rate discounts.

What should you do? There are several steps to take:

- Call in a third-party security company to fully examine all properties, including each and every entrance and exit point and the entire perimeter.
- Get a written recommendation for security improvements from the company that conducted the study.
- Evaluate security for access to floors above ground level, i.e., what checks are in place on the ground level to protect the tenants on upper floors of commercial properties against possible intruders.
- Look at electronic security in all areas of the building, especially exits, hallways on above-ground floors, stairways, etc.
- Examine electronic fire testing devices.

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Strategies for protecting real property and human capital

- Review parking area security.
- Make a study of who regularly comes on to the premises, such as building employees, cleaning employees, trash pick-up vendors, regular delivery people and other non-employee repair sub-contractors. Make sure all these “regular visitors” have had thorough background checks, i.e., make it part of the contractual requirement with the vendors and offer to provide those background checks through the security company that you have retained. That cost can be passed through.
- Get a certificate from the security company that these checks have been done and that the suggested improvements have been enacted.

Clearly, property owners who have undergone this process will be in a better bargaining position than those who have not, and the insurance community will certainly take notice of these differences. They separate those who make a commitment to recognizing and reduce the risk of a terrorist event on their property from those who do not. This type of assessment will also have a huge impact on lenders.

Given that Dec. 31, 2005 is not that far away, preparations need to be made now to deal with the TRIA expiration deadline. The cost of conducting the securities study and background checks should more than be absorbed by the reduction in insurance rates for terrorism coverage. Those property owners who have undertaken this process will be able to compare their due diligence efforts with other property owners who have not in “making their case” to insurance companies.

Source: Property Protection Report