

**TRAPS TO  
AVOID**

## Don't Agree to "Keep" As-Is Space in "Good" Condition

**I**t's neither contradictory nor uncommon to lease space to a tenant in "as-is" condition while also promising to maintain some or all of that space, such as the roof or parking lot, until the transfer is complete. You just need to be careful about how you word the obligation.

Specifically, beware of agreeing to "keep" the space you're responsible for maintaining in "good" condition. The risk is that a tenant or court may interpret the promise to "keep" something in "good" condition as a commitment to also make the repairs necessary to put it in good condition. And that can end up costing you a fortune in expenses that you didn't foresee when you signed the lease.

### **"As-Is" Clause Requires Landlord to Repair Roof**

A Utah landlord learned this lesson the hard way. When they signed the lease, neither the landlord nor the tenant had any idea that the roof of the property had a serious defect. The lease said the tenant would take the space in as-is condition. But it also required the landlord to "keep the roof of the leased premises in good condition and repair." Later, when the defect was discovered, the tenant demanded that the landlord fix the roof. The landlord denied any responsibility since the tenant had leased the property as is.

The state court ruled that the landlord had to make the necessary roof repairs. Although the tenant accepted the space in as-is condition, the court reasoned that the obligation to keep the roof in good condition implied that the roof actually was in good condition at the beginning of the lease. Otherwise, the landlord wouldn't have agreed to "keep" it way. Having

made the promise, the landlord had to put the roof in good condition [*Wolfe v. White*, No. 7431, 119 Utah 183, 255 P 2d 725 (Utah, Sup. Ct. 1950)].

### **Takeaway**

Landlords that lease property as is may nonetheless take on limited duties to repair or maintain all or part of the premises at the time the lease is signed. In the landlord's eyes, this is just an upfront commitment that ends when the property is transferred to the tenant. Unfortunately, things may not always work out that way. Old as it may be, the *Wolfe* case remains highly relevant today. The lesson: Worded wrong, a landlord's promise to maintain or repair all or a part of a commercial property upon lease signing may create a larger or continuing obligation that overrides a provision stipulating that the tenant accepts the property as is.

How you avoid this trap depends on the particular obligations you're willing to take on. If, for example, you're willing to maintain a part of the roof in its current condition at the time the lease is signed without making any repairs, say in the lease that you'll "maintain the roof in its present condition" at the commencement date of the lease.

If your intention is to make only initial repairs to the roof without committing to maintaining it over the term of the lease, the lease should say that you will "put the roof in good condition" but that the tenant is responsible for maintaining it after that.

It's not exactly clear what the landlord in *Wolfe* was trying to do. But in either case, adopting these subtle but far from minor language changes might have saved the landlord a ton of money.