

# RESTORATION CLAUSES IN OFFICE AND INDUSTRIAL LEASES

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When negotiating the inclusion and extent of a restoration clause in an industrial or office lease, there are basic issues to be considered by the tenant and landlord. What's more, the tenant's creditworthiness and existing economic conditions will often impact the extent to which the landlord will require full, partial, or no restoration at the end of the term.

In a perfect world, the tenant should return the premises in good condition – ordinary wear and tear excepted for tenant's permitted uses – not the condition it was in when it was first leased. Any real property improvements and fixtures should remain as the landlord's property. Personal property, often referred to as "trade fixtures," should be removable and removed by the tenant in a reasonable time at the lease expiration or termination, subject to the tenant's repair to the real property of any effects from the personal property.

But the world is not perfect. What if an industrial tenant requires a large concrete pad installed for its machinery? What if an office tenant requires half-height walls and glass panels to facilitate an "open" collaborative environment, or complex data and communications systems replete with huge wire bundles, labyrinthine buss ducting, and cooling systems?

**Tenant's Perspective:** fight hard to keep a restoration provision out of a lease altogether. The tenant's fallback is agreeing to restoration, conditioned upon the landlord deciding whether or not he or she would invoke its restoration right and which, if any, alterations and improvements before the tenant initiates the work. In that way, the tenant can decide whether or not it wants to invest the money and time both at the beginning (installation of alterations and improvements), and end of the lease term (removal of alterations and improvements). If the landlord won't agree to these terms, the tenant can decide whether or not this is the best space for its business.

**Landlord's Perspective:** more often than not, a tenant's particular improvements suit only that tenant and must be removed upon lease expiration to make way for another tenant's specific needs. Many, if not most, sophisticated and well-capitalized landlords typically price their lease rates to include demolition costs to be incurred when the tenant leaves. At lease execution, the landlord may not know at the end of a 10-year lease which improvements it would allow to remain in the premises. The landlord's inclination is to not specify at lease execution, which alterations or improvements must be removed at term's end.

**Personal Property and "Trade Fixtures:"** Machinery, equipment, and other items of personal property usually belong to the tenant, and the tenant should be allowed a reasonable time period to remove such property upon lease termination, as long as the tenant repairs any adverse effects to the real estate by the use and removal of such personal property. If a tenant installs all new bathroom fixtures, it is unlikely that he or she would abscond with all the toilets and sinks and leave holes in the floor upon lease expiration.

In most cases, consideration of the parties' needs can be fairly accommodated through conscientious negotiations, provided both parties are clear that certain alterations will require the landlord's approval before installation. For example, non-structural, interior alterations costing less than \$10,000 may usually be installed without the landlord's prior approval.

In short, the more complex the improvements, the more forethought must be invested by the parties to draft lease provisions that ensure neither tenant nor landlord is saddled with undue burdens to remove property, real or personal, from the premises as the Term expires. The dividend of planning is reduced problems in the end. ♥