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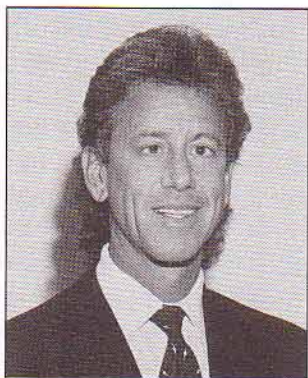
## FIRES, FLOODS, BOMBS, AND HURRICANES: NEGOTIATING PROTECTIONS FOR THE TENANT

BY ROBERT G. DAVIDSON, ESQ. & DANIEL J. KOPP, ESQ.

Each year new disasters strike different parts of the United States, dramatically affecting the lives of thousands, sometimes millions, of people. Property damage from such disasters can run into the millions of dollars and in some cases exceed a billion dollars, as was the case with natural disasters such as Hurricane Andrew in south Florida, recent earthquakes in Los Angeles and San Francisco, or the 1993 floods in the Midwest. While most disasters are natural, some are not. For example, The World Trade Center in New York City recently was victimized by a terrorist bombing. Several office and retail buildings in downtown Chicago were shut down due to the accidental flooding of an old, rarely used subterranean tunnel network. Commercial landlords and tenants must grapple with the issues raised by these calamities.

For tenants of commercial property, the most fundamental issue is how to allocate the risk of loss and the damages that result from these disasters. Should the landlord or the tenant bear the loss alone? Or, should the risk of loss be shared?

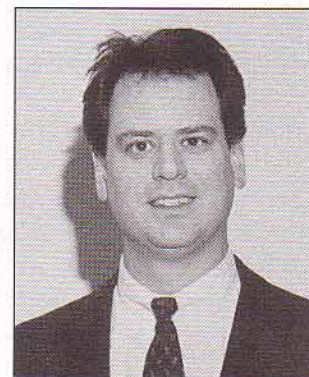
The lease forms used by most landlords address what happens in these types of situations—in a manner which completely favors the landlord. For example, most lease forms provide that if a critical service, such as electricity, is not provided to the leased premises for any reason, the tenant waives claims of constructive eviction and claims for damages which otherwise would exist at common law. Furthermore, the tenant usually remains obligated to pay rent. This is the case even if the interruption in service renders the leased premises untenable. Likewise, most lease forms provide that if a building is damaged by fire or other casualty, the landlord alone decides whether the lease shall terminate. Often the landlord reserves the right to make this decision long after the fire or casualty has occurred. Moreover, stan-



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Robert Davidson has practiced real estate and corporate law for 17 years as a partner at the Chicago firm of Greenberger, Krauss & Tenenbaum (now known as Schwartz, Cooper, Greenberger & Krauss). His concentration is commercial leasing, and he regularly represents companies as tenant's leasing counsel and pension funds, institutional clients and developers as landlord's leasing counsel. Mr. Davidson has recently lectured at IDRC's "Innovative Leasing Techniques for Corporate Real Estate" national seminar series and has spoken on leasing topics at seminars sponsored by the Chicago Bar Association. He is licensed to practice law in the States of Illinois and Florida, and received his law degree *cum laude* from Indiana University Law School, where he served on the Board of Editors of the *Indiana Law Journal*.



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