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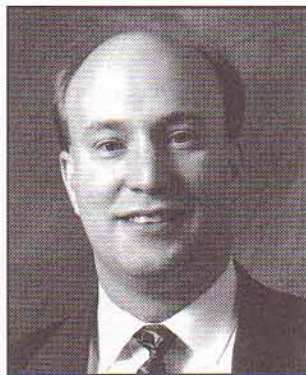
FOLLOWING EXIT CLAUSES – WHERE WILL THEY LEAD YOU?

BY ROBERT J. DOWNS, JR. AND DONALD R. WENIG

Your branch office's lease expires at the end of this month and you have negotiated a terrific deal at the new building down the street. Looking forward to relocating and the beginning of your new lease, your problems may have just begun with your expiring lease if careful consideration was not given to the frequently ignored exit clause (or surrender clause). When negotiating their lease, many tenants gloss over their lease's exit clause which describes the tenant's responsibilities for the condition in which the premises must be returned at the end of the term. A poorly drafted exit clause can expose a tenant to unexpected liability. This report will explain some of the legal principles behind exit clauses, point out the tenant pitfalls, and provide some means of avoiding these pitfalls.

CASE-IN-POINT

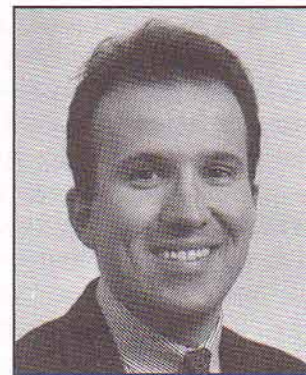
When Chemical Bank ("Chemical") announced it would be leaving its world headquarters in Manhattan, Chemical received from the Landlord a list of 87 clean-up demands ranging from reprogramming the elevators to removing the trading floor and atrium as reported in a recent article in *The Wall Street Journal* ("Moves Are Often Disrupted By 'Exit Clauses' In Leases", M. Pacelle, *The Wall Street Journal*, July 29, 1994). Purportedly, Chemical's exit clause required Chemical to do certain work including removing signage and certain light fixtures and repairing certain unspecified facilities. As reported in the *The Wall Street Journal* article, when Chemical's lease ended, this landlord, who recently had lost another large tenant, faced having a nearly vacant building in need of numerous capital refurbishments. When Chemical refused to comply with the landlord's laundry list of exit work, the parties became embroiled in litigation. While the landlord and Chemical battled in court, office life deteriorated as reported by the *The Wall Street Journal*. In Chemical's suit, it was alleged that the landlord began "harassing Chemical, apparently with the aim of having Chemical abandon its rights." Specifically, Chemical alleged that following a minor fire the sprinkler ran more than necessary, electricity was cut, and construction work was disrupting Chemical's business activities.



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Robert J. Downs, Jr. is Manager of Real Estate and Financial Services for General Accident Insurance Company headquartered in Philadelphia. Mr. Downs is responsible for lease and contract negotiations for 33 properties comprising 1.5 million sf. He is also responsible for the financial analysis, risk management, real estate planning and asset management associated with these properties. Mr. Downs received his Bachelor of Science from Villanova University and his Masters of Business Administration from the University of North Carolina and is currently pursuing his Juris Doctorate at Temple University. He is a member of the International Development Research Council (IDRC) and a founding director of the Construction Owners Association of America (COAA).



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Donald R. Wenig represents corporations nationally in obtaining their real estate objectives as a corporate real estate broker and consultant. Mr. Wenig actively contributes to the commercial real estate field by having authored several published articles on commercial real estate matters and has lectured to numerous groups on such topics. Prior to joining Pollina Corporate, Mr. Wenig was associated with one of Chicago's largest law firms. Mr. Wenig received his Bachelor of Arts from DePaul University and his Juris Doctorate from The John Marshall Law School.