

## VACANT FACILITIES

# IS YOUR PROPERTY COVERED DURING RENOVATIONS?



COMMERCIAL PROPERTY owners are often surprised to learn how strict insurance policies can be once a building is considered vacant. Under commonly used property insurance forms developed by the Insurance Services Office, coverage for certain types of damage can be sharply limited if a building has been vacant for more than 60 consecutive days.

At the same time, those ISO forms — and decades of court rulings — recognize an important exception: a building that is under construction is not treated as vacant. Just as important for property owners planning upgrades, that exception has been extended to buildings under renovation as well.

### How vacancy exclusions work

Most ISO-based commercial property policies include a “vacancy loss condition.” If a covered building has been vacant for more than 60 consecutive days before a loss, coverage is either reduced or eliminated for certain causes of loss.

For buildings vacant beyond that 60-day window, ISO forms typically provide:

- No coverage for vandalism, sprinkler leakage (unless protected against freezing), building glass breakage, water damage and theft or attempted theft.
- Reduced coverage for other covered causes of loss, usually a 15% reduction in the amount paid.

What counts as “vacant” depends on who is insured. For tenants, vacancy generally means the space does not contain enough business personal property to conduct customary operations. For building owners, vacancy usually turns on whether at least 31% of the total square footage is rented or used for normal operations.

These provisions are designed to address higher risk. Empty buildings are more vulnerable to vandalism, undetected water leaks and theft because fewer people are present to spot problems early.

### Construction and renovation exemptions

ISO forms carve out an important exception: buildings under construction are not considered vacant, even if they would otherwise meet the definition of vacancy.

Construction sites usually have workers present, materials moving in and out and regular activity that reduces the risks vacancy exclusions are meant to address.

Over time, courts have extended that same reasoning to renovation work on existing buildings. A key case is *TRB Investments, Inc. v. Fireman’s Fund Ins. Co.*, decided by the California Supreme Court in 2006. In that case, the court ruled that a policy’s exception for buildings “under construction” also applied to a building undergoing renovation.

The court reasoned that renovation activity can involve just as much — or more — daily presence as new construction. From a risk standpoint, it would not make sense to treat a building undergoing renovation as vacant while protecting one under construction.

That reasoning is now reflected directly in ISO’s commercial property forms.

### The takeaway

Vacancy exclusions are one of the most misunderstood parts of commercial property insurance. ISO forms and court decisions offer meaningful protection for buildings under construction or renovation, but that protection depends on real activity taking place.

Before you start a renovation, call us for a review of your policy language to confirm how your policy defines vacancy and to discuss whether supplemental coverage makes sense. Doing so can help ensure that a temporary period of renovation does not turn into an unexpected coverage problem after a loss.