What You Need to Know About Waivers of Subrogation, Whether You're a Tenant or a Landlord

If you've signed a commercial lease or a construction contract, there's a good chance it included a clause called a waiver of subrogation. It's easy to skim past, but it can have a real effect on who pays when something goes wrong. Here's what it means and what to watch for.

First, What Is Subrogation?

Subrogation is your insurer's right to recover what it paid on your claim from whoever caused the loss. For example, if a neighboring business causes a fire that damages your property, your insurer pays your claim and then may pursue that business (or its insurer) to get its money back.

What Is a Waiver of Subrogation?

A *waiver of subrogation* is an agreement that your insurer will not pursue another party for a loss that party causes, even after your insurer pays your claim. Waivers of subrogation are common in leases, construction contracts, management and operating agreements, and other business contracts.

Why Would Anyone Agree to One?

It may seem odd to give up the right to recover money, but these waivers serve a practical purpose. They allow the parties to keep doing business together without being pulled into costly, relationship-damaging lawsuits. Instead of fighting over who caused a loss, each party relies on its own insurance and is responsible for its own exposures. That often means faster claim settlements and fewer disputes.

How It Works Between a Landlord and a Tenant

In a typical commercial lease, the waiver runs both ways:

- The **landlord** waives its right of recovery against the tenant for damage the tenant causes to the landlord's building. The landlord's property policy alone pays for the damage to the building.
- The **tenant** waives its right of recovery against the landlord for damage the landlord causes to the tenant's improvements and business personal property. The tenant's policy alone pays for the loss to its improvements and property.

For example, suppose a tenant's employee accidentally starts a fire that damages the building. With a mutual waiver in place, the landlord's insurer pays to repair the building and cannot turn around and sue the tenant to recover those costs.

What to Watch Out For

- **Get your insurer's approval.** Many policies allow you to waive subrogation only if the waiver is made in writing before a loss occurs. Some require a specific endorsement to be added to the policy. If you sign a waiver your policy doesn't permit, you could jeopardize your coverage for that loss.
- **Understand the cost.** Your insurer may charge an additional premium for a waiver, particularly on general liability or workers' compensation policies.
- **Consider the impact on your rates.** Because your insurer can't recover its payment from the party at fault, the loss stays on your record. Your premiums could increase because of an accident or injury you weren't responsible for.
- **Read the scope carefully.** Some waivers apply only to property damage, while others extend to liability or workers' compensation claims. Know exactly what you're agreeing to before you sign.
- **Make sure it's mutual.** In most cases, a waiver should protect both parties equally. Be cautious of one-sided language that only benefits the other party.

The Bottom Line

A waiver of subrogation can be a smart way to keep business relationships running smoothly, but it needs to line up with your insurance coverage. Before signing a lease, construction contract, or other agreement that includes one, have your insurance agent review it to make sure your policy supports the terms.

Have a lease or contract with a waiver of subrogation? Contact the McCurdy Group at 508-347-9343 and we'll review it with you.