

WHO SHOULD PAY FOR TENANT IMPROVEMENTS?

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Issues of tenant improvements raise important questions of burden sharing between owner and tenant. The owner should understand risks of shared responsibility before entering a lease with tenant improvements to avoid hidden costs and accountability burdens.

Taking full responsibility for tenant improvements benefits the owner by offering control over project implementation, but implies management and spending obligations. Sole tenant responsibility reverses costs and benefits; the owner shoulders none of the costs but loses control over project implementation.

Most owners negotiate shared responsibilities for tenant improvements. But with shared responsibility, the owner risks being deemed a “participating owner” in work over which the owner has little control, risking significant cost burdens. As a participating owner, the owner may be financially responsible for work performed on the tenant space.

Avoiding the “participating owner” trap requires examination of four key circumstances that may create owner liability:

1. Financial contributions by owner including project allowances in tenant lease.
2. The owner controlling or benefiting from implementation.
3. Ownership approval requirements in lease.
4. Tenant improvements being necessary for premises use as specified by the lease.

Tenant improvement decisions run risks that warrant careful consideration regarding tenant and owner responsibilities. While pre-project prophylactic measures are available, the most important step is weighing costs and benefits of a lease’s burden-sharing agreement before questions of tenant improvement ever arise. ■