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(b) *Contents.* The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

(c) *Housing leases.* The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

§ 644.448 Limits on government obligation to restore.

The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

(a) *Restoration not to exceed fee simple value.* The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

(b) *Where estimated cost of restoration exceeds diminution in value.* When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that,

> This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished

(28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§ 644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held