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LANDLORDS LEASE OFFICE SPACE. HOW OFTEN DO YOU?

Every day of the year, landlords lease office space. How often do you? Most likely, once every five years. The landlord's goal, understandably, is to obtain the highest possible pricing from a tenant. It is essential that tenants create a competitive environment and sit at an even negotiating table with their landlord. What you don't know can, and will, cost you.

What don't you know? Many hidden items in a lease that cost tenants money over a lease term, such as the pass-through of operating expenses – the cost for operating the building. Typically a "base year" determines the landlord's charges for operating expenses in year one of a lease which the landlord absorbs. This "base year" of costs is then used as a comparison of operating costs in subsequent years during the lease term. It is essential (although not standard) in leases, that the base year be "grossed- up" to reflect a building that is at least 95% occupied.

This issue is highlighted in today's market given the significant vacancy rate. Items such as the utilities, water, supplies, and janitorial will cost the landlord less money in a building with a 20% vacaancy than a building with a 5% vacancy. If in a base year there was no "gross-up" for the costs of running the building, a tenant would see significant increases each month in comparison years on operating expenses when the building was 95% or 100% leased. Equally important, what is the landlord including in these costs? Are these costs solely for the operations of this specific building? How is the floor space measured? Is the computing of the floor area using the standard method pursuant to The Building Owners and Managers Association guidelines? Can the amount of square footage change during the lease term? Yes, often leases do provide landlords with the right to increase the amount of square footage thereby increasing the rent due if not addressed in lease negotiations. Have an option to renew the lease at market? What's market?

There is a vast difference from the landlords' and tenants' point of view on this issue. In the body of the lease is "market" simply limited to the rental rate without consideration to concessions of the market at a given time? In today's tenant's market rental abatement and tenant improvements are certainly one of many standard "market" items that a wise tenant will address. Often in the fine print of the option language the rental rate is at market, however,

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if market is less than the last month rent, the new rent will be the higher of the two numbers. Essentially a tenant is being penalized for already being an existing tenant under the previously described scenario if the option clause is not carefully drafted to protect the tenant. Tenants easily overlook significant major issues when negotiating a "rental rate."

Time is a tenant's friend. Tenants, for ideal positioning, should commence the process 18 to 24 months prior to a lease expiring or option notification. Without time constraints, tenants can acquire a platform of real estate knowledge to negotiate from a fully informed position. The need for tenants to plan for addressing a lease expiration is further enhanced by the "holdover" provision often found near the end of a lease document. A "holdover" provision outlines the cost for a tenant remaining in the premises beyond lease expiration, even if a tenant remains in the premises with the landlord's consent. This "holdover" cost could run as high as 300% of the last month's rent, another unforeseen expenditure if a tenant does not protect themselves.

You have negotiated aggressively for the high identity location of being located directly off the elevator lobby. Can the landlord relocate you? Yes again. Leases provide the landlord the right to relocate a tenant at the landlord's discretion, again an unforeseeable cost which may be limited or avoided with careful attention to this clause.

A lease is set in concrete for the lease term. A mere $.25 increase in rental rate for 5,000 square feet hits the bottom line with a $75,000 increase of occupancy cost over a five-year lease. You would never go to court permitting the opposing council to represent your interest or into an audit without your accountant, hence you would not go to the negotiating table without your own tenant advocate. Landlords expect a tenant will be represented and the fee for a tenant's advocate work is already included in the cost of the transaction; it is a windfall for a landlord if you show up alone. The landlord is not your friend.

There is a window in time for tenants to set long term occupancy cost in today's high vacancy market, so don't miss it. Landlords are providing significant concessions in all areas of lease components, coupled with year one base rent pricing discounted up to 75% less than pricing of two years ago in some cases. The most powerful tool in negotiating any item – market expertise and competition, will save a tenant significant rent dollars and protection in leases that are inherently to the landlord's advantage.

What you don't know can, and will, cost you.

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