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Newsletter, August 2011 Commercial Lease Terms - Advanced

Some tenants need special lease provisions, for example, medical practices and businesses in the computer industries. In this article, I discuss special, advanced lease provisions that tenants frequently need. For a basic explanation of commercial leases, refer to the article "Understanding Commercial Leases" on my website.

Without further adieu, consider these additional lease provisions:

Tenant Improvements. For your tenant improvements, negotiate a basic construction plan with the landlord before you sign the lease. Also be clear what the lease requires at the end of the term regarding your removal of the tenant improvements and restoration of the premises to their original condition. At the end of a lease, a landlord is more likely to demolish specialized tenant improvements (e.g. those of a medical office) than the more classic office or retail tenant finish. You might want to negotiate the cost of restoration in the lease.

Hours of Operation. In many leases, the landlord does not provide basic services on the weekend, holidays or after hours. If you work on the weekend, after-hours or on holidays, be sure that the lease reflects this and that the landlord provides basic services during off-hours. Heating and air-conditioning are the most obvious needs – when these services are not provided, office space (especially space with big windows) can be freezing in the winter and roasting in the summer. Also, note that some leases require specific hours for which you must be open for business, so be sure that you will be open at these times (or change the lease to reflect your business hours).

Option on Premises Next Door. If your business might expand rapidly, consider getting an option on premises next door in the complex, so that when the premises become vacant, you have the first right to lease them.

Assignment / Sublet. You might want to sublet space in your premises to strategic partners, affiliates or related service providers. Make sure your assignment / sublet provision permits this. Also, it helps to have a provision that permits you to assign the lease to a buyer of your business who meets certain financial standards -- this helps with your exit from the business.

Use of Premises. You might want to increase the scope of your business beyond your limited scope when signing the lease. In this respect, be careful that your use clause isn't too narrow.

Forced Move to Substitute Premises. Many leases have provisions requiring the tenant to consent to a substitute premises if the landlord wants to move the tenant. Delete these provisions from the lease if your tenant improvements are significant, or if your clients will only access your original premises.

Utilities. Some tenants need extra electricity, water or other utilities, for example, some hi-tech companies use extraordinary amounts of electricity (and air-conditioning for their server rooms), and some health care providers or food-service industries use a lot of water. If this is the case, before signing the lease, be sure that the building can handle your load on utilities. Also be very clear how the landlord will allocate charges for utilities to your premises.

Co-Tenancy Termination. To get new clients or customers, your business might depend on another company that is located next door or in the same building or complex. If this is the case, consider negotiating for the right to terminate your lease if this other company were to leave.

And lastly,

Death / Disability Termination. For solo practitioners, consider negotiating for an automatic termination of the lease if you were to die or become disabled. This gives peace of mind to you and your family, because they won't be stuck with your lease liability after you lose the ability to work.

If you're still awake at this point, congratulations. A lease is a major financial commitment so please talk with a lawyer before signing one. Call me if you need to talk more.

Learning from Dogs:

John Singer Sargent:

From Professor Frans de Waal, a primate behaviourist at Emory University:

I don't believe animals are moral in the sense we humans are – with well developed and reasoned sense of right and wrong – rather that human morality incorporates a set of psychological tendencies and capacities such as empathy, reciprocity, a desire for co-operation and harmony that are older than our species.Human morality was not formed from scratch, but grew out of our primate psychology. Primate psychology has ancient roots, and I agree that other animals show many of the same tendencies and have an intense sociality.

