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Commercial leases: pointers and pitfalls



July 2012 Special Focus: Commercial Real Estate

by Alan Callioni

Negotiating a lease is simple, right? Wrong. Look beyond the free rent and cheap rates to know your rights and responsibilities – this legal document will control aspects of your business for years. Remember to seek professional legal and real estate counsel.

Agency and representation

The concept *Agency* often prompts a lawsuit filing. Tenants thinking they had representation often learn too late that their broker represented the Landlord. Involve your own broker to negotiate the lowest rate and the highest incentives. Although one broker can represent both sides, this can sometimes be problematic. Have an attorney review your lease, even if your Landlord claims it's 'standard.'

Limiting exposure

Avoid signing a *Personal Guaranty* as your Landlord can sue you personally, piercing your corporate shield. Offer to pay a larger security deposit or arrange for the guaranty to terminate. Negotiate limits/caps on common area maintenance, tax and insurance to no more than a 20 percent increase over the previous year. Also, set limits on your outlays for HVAC repairs.

Option to expand

If expansion is likely, it's easier to expand next door than to relocate. Negotiate a *Right of First Refusal* on the adjacent space.

Options to renew

Arrange for a short-term lease, with two to three options for renewal. Also, negotiate a pre-determined rent rate for the option period(s).

Option to terminate

If you need to terminate early you can expect to be penalized two to three months of rent, but you'll

minimize your overall risk.

Lease types

Gross, Modified Gross and Triple Net are the three lease type categories. Gross leases are the simplest. Triple net leases are the most complex, yet the most popular.

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