

CARLTON FIELDS, P.A.

## TENANT LEASING STRATEGIES:

## Improving Your Position

## situation

Corporate legal departments are often asked to review and/or negotiate property leases on behalf of the company. That puts inside counsel in the position of managing a highly specialized transaction.

## in-house counsel challenge

Many in-house counsel may have little expertise in property leasing. To complicate matters, most commercial leases use language that is biased in favor of landlords. However, there are ways to temper the bias and gain significant advantages for the company.

## approach adopted

Lease situations may vary, but there are many ways to improve a company's position without altering a landlord's perception of the deal. The key is to understand and negotiate potentially costly fine-print issues beforehand. For example:

- Negotiating a "last chance" renewal notice at the outset forces the landlord to notify you directly if your option to renew is due to expire. Missing the deadline by even one day could allow an unscrupulous landlord to impose a substantial rent increase. Renewal notice is crucial, especially if your company spent \$1 million on building renovations.
- Capping traditional "pass-through" expenses—additional monthly fees for everything from landscaping and outdoor lighting, to common area maintenance and real estate taxes—can save substantial dollars over the life of a commercial lease. If it's a new lease and the landlord won't negotiate, consider another site.
- Establishing less restrictive assignment or sublet rights in advance is important, but often overlooked. There should be as much flexibility here as possible. A company may grow quickly and need more space. If forced to move, it will need the right to assign the lease or at least sublet the space for the remainder of its lease. If it's not agreed upon beforehand, the landlord may unfairly restrict your opportunities.
- Negotiating "buy-out" rights in advance gives a retail chain the option to close an underperforming store and terminate the lease early. The chain will have to pay penalties, but the cost will be substantially less than the entire lease obligation.

## measuring success

Over time, the financial advantages gained from the contract become more apparent to company leaders and inside counsel.

## implementation steps

- Gather all information and list key lease terms, including size in square footage, proposed rent, duration of lease and renewal options.
- Thoroughly analyze options with regard to venue, usage and potential future use, including the need to expand or move.
- Analyze the impact a major event—like a change in company ownership—will have on the lease. What could transpire that would conflict with the proposed terms?
- Develop a letter of intent with the prospective landlord.
- Turn to outside counsel or consultants as needed for specific advice and expertise. A brief review to identify key points can help contain costs and increase efficiency.

## future issues to consider

*Negotiating and managing property leases is completely different from buying property. Seemingly minor leasing issues may not become noteworthy until years later. Inside counsel will need to review and update certain issues and anticipate changes, both in the legal environment surrounding a lease and the nonlegal business developments that might affect it.*


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