

CONSIDERATIONS WHEN LEASING COMMERCIAL PREMISES

THE 'TOP 10' LIST

Although it is debatable that this 'Top 10' list of mine will never make it to the David Letterman show, there are some important things to consider before entering into an offer to lease commercial premises. In light of the maxim that a verbal agreement is worth the paper it is written on, anything that is important to you as a tenant should be in writing. So here is the top ten list of issues the tenant should consider before signing an offer to lease:

1. Identity of Tenant

The tendency is to use your business name on the offer to lease. However, I would recommend that a separate corporation be the named tenant and if the landlord requires a guarantor that the terms of the guarantee be negotiated. If you do not have a company set up at the time that the offer is signed, I would recommend that you add the following magical phrase after the name of the tenant in the offer, "in trust for a corporation to be incorporated without personal liability". This will allow you to set up a company later which will assume the liability.

2. Area Leased

Be clear on whether the area in the offer is rentable or useable space. "Rentable Area" is the area you will be paying rent on and includes a percentage of the common areas of both your floor and other parts of the building. Both numbers should be specified, if possible.

3. Permitted Uses

Be sure that your contemplated use of the premises is clearly set out in the offer and also that it is permitted by law. This may mean giving yourself some time after the offer is accepted to investigate the zoning and any restrictive covenants which may affect the use of premises. Remember to check out the parking requirements which may be required by the zoning for your specific use.

4. Continuous Operation Clauses

Although these clauses have not been enforced with great success by the courts, no one wants to get into a battle with their landlord. Generally, you should try to delete any requirement for continuous operation, especially if you are an office or industrial user.

5. Extra Services and Out of Hours Access

Make sure that you are aware of the costs of using your premises out of normal business hours, especially in office towers where the air-conditioning shuts off. It is hard to motivate staff to put in weekends at the office if the office is dark, 30 degrees and smells of Friday's lunch. You should also make sure that you can bring people up to your office out of regular hours.

6. Standard of the Building

Generally, you lease in a building because you like the way it looks. If the building is Class A when you rent and you are paying Class A rents, you don't want it to turn into a Class B as the years go by. You should try to obligate the landlord to maintain a standard..

7. Options and First Rights of Refusal

If possible, always negotiate as many option periods as possible, preferably with some cap on the rental rates. You should also consider possible expansion plans by getting a first right of refusal to lease the adjoining space.

8. Landlord's Work

The landlord will probably want to put in a general rubric of delivering the premises to a "base building standard" but try to be more specific and, if necessary, retain a consultant to advise you. There are technical factors that you may not have a grasp of, such as the air flow requirements, number of thermostat controls, number of lighting fixtures, availability of water, etc. You may want to have your deal conditional upon agreeing with the landlord as to what exactly is included as the landlord's work once your consultant looks into it.

9. Rights to Assign

You should be careful to specify rights to assign or sublet. If, for example, you are intending to sublet an office or two until you need them, you should reserve this right without having the necessity of getting the landlord to consent. As well, if the subtenants require directory listings or corridor signage, you should put something in the offer to lease that will allow you the rights to do so. You should also ask for the right for non-arms length transfers without having to obtain the landlord's consent.

10. Extraordinary Repairs

One item that can cost you later is an obligation to replace major components at your own expense. The most common item that we run into is the heating and air-conditioning units. The last thing that you want to be stuck with is the requirement to pay for a new \$50,000.00 air-conditioning unit with one year left on your lease. Include a clause obligating the landlord to undertake such repairs at its own expense and your obligation should be limited to paying for it on an amortized basis.

I hope that this top ten list will be of some assistance. Of course before committing yourself you should always get legal advice from a lawyer experienced in the area of leasing. Maybe the most important thing to keep in mind is making your deal conditional upon your lawyer's approval.

Editors: *Morris Sosnovitch* *416-368-6444*
 Laila Parvez *416-368-0491*

Updated: November, 2006