



NON-PROFIT ADVANTAGE

Key leasing issues every non-profit should consider.

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Introduction. Negotiating a lease can be a challenging endeavor, particularly for non-profit managers who may not be sure how to address issues that concern their organizations. Some of the key issues that a non-profit manager may want to consider are discussed below.

- **Economic Terms.** Negotiating the best deal you can get on base rent is clearly important. Operating expenses (also known as CAM, pass-throughs, operating costs, etc.) should not be overlooked. Occupancy expenses under a commercial lease are typically the second highest cost in most non-profit organizations' budgets.
- **Tax Deductions.** Although it is not common, some landlords may be willing to take a tax write-off and to lease space at a steep discount to a non-profit organization. The landlord could take a tax deduction for what the premises would have earned, if rented out at market-prices. Both the landlord and tenant should consult with their tax advisers in such a situation.
- **Term and Space Needs Issues.** The non-profit manager should carefully read and understand the lease provisions that deal with dates and other temporal events including: (i) when the lease becomes effective; (ii) when the tenant will get the space; (iii) when the term of the lease commences; (iv) when tenant must start paying rent (i.e., the rent commencement date); and (v) other similar terms and provisions. The lease's commencement date should fit the needs of the non-profit and ensures completion of the landlord's work prior to possession. The non-profit should also negotiate exit strategies such as early termination provisions and rights to sublet or assign the lease. Further, the non-profit may want to preserve future options to extend the term of the lease and to expand to additional space in the building.
- **Co-Location Rights.** Faced with tight budgets, some non-profits are looking at co-location. This is a strategy to aid non-profits in achieving greater efficiency, synergy and economies of scale. Sharing costs with other organizations means sharing costs and often results in great mission advantages. For example, many non-profits report at least one collaborative effort with their co-tenants. While the benefits can be considerable, these enterprises can result in complex managerial and legal relationships. If such a strategy could benefit the organization, the non-profit manager should ensure the necessary flexibility in the lease.

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- **The Right Team.** Before starting down this path, every non-profit organization should ensure they have the right team to help them with the process and to protect your interests. This includes (i) an experienced broker who understands market conditions; (ii) a lawyer experienced in commercial real estate to negotiate the lease; and (iii) tax professionals experienced in issues facing non-profit entities. A good team will ensure the non-profit manager has a good understanding of the market economics, lease provisions and tax implications in order to make sound decisions.



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Real Estate Counselors is a boutique law firm specializing in commercial real estate and business transactions.

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