



REAL ESTATE
COUNSELORS

Focus on Leasing: *Commencement Date Issues*



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WHEN DOES A LEASE START AND WHEN DO THE TENANT'S OBLIGATIONS BEGIN?

Answers to such questions may not be that simple.

- **Contractual Obligations** – Absent express language to the contrary, each party's obligations under a lease generally begin when the lease is fully executed, though some obligations may not begin until the term of the lease commences and/or possession of the premises is delivered. A tenant's obligation to carry insurance and indemnify the landlord, typically begins when the term of the lease commences. If, however, the tenant is permitted early access to the premises (to install furniture and equipment for example), those obligations may begin as soon as tenant enters the premises.
- **Monetary Obligations** – A tenant's obligation to pay rent usually will not commence until the landlord has delivered possession of the premises to tenant in the condition required under the lease. Some landlords will provide, however, that rent commences as soon as tenant starts to use the premises for business purposes (even if the landlord hasn't finished all of its work and delivered the space). In cases where the tenant is performing some work or otherwise involved in the build-out of the premises, a lease may allow the landlord to retroactively establish the date rent should start if tenant caused any delays in construction or delivery of the premises.
- **Delivery Delays** – Most leases say that if a landlord is delayed in delivering possession of the premises, the landlord is not in default, and the tenant cannot terminate, but that no rent will be payable until the premises is delivered.



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- **Delivery Delays** (*continued*) – A tenant with negotiating leverage may want to consider requiring some remedies for late delivery, especially if they will be in holdover under their current lease if the landlord not deliver their new space on time. Remedies could include rent abatement for each day the space is not delivered, a contingency for another space until the premises is delivered or a delay of rent until the next appropriate point in the seasonal business cycle. A termination right may also be necessary though landlords frequently require 30 – 60 days of grace period before any such right.
- **Early Access** – Under some leases, a tenant may be permitted to enter the premises one or two weeks prior to the commencement date to install telephone equipment, computer cabling and office furnishings. The tenant should make sure that neither rent nor tenant’s operating costs are payable during any early access period.
- **Conclusion** – To avoid unexpected costs and other damages, it is critical that a tenant be aware of issues that may arise concerning the commencement date of the lease and all related obligations, as well as obligations under other agreements (such as the tenant’s current lease) that may be impacted by the commencement and delivery of its premises. An experienced commercial real estate attorney and commercial broker can advise a tenant on pitfalls to avoid.
- **Your Transaction** – The issues discussed in this article may not necessarily apply to your transaction, and your transaction may raise issues not addressed in this article. In all cases, we advised you to consult an experienced commercial leasing broker and experienced commercial real estate attorney to make sure the issues for your transaction are properly addressed.

