



## NON-PROFIT ADVANTAGE

*Key leasing issues every non-profit should consider.*

Peter Pokorny, Esquire ©2012

**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.

## REAL ESTATE COUNSELORS, PLLC

### PROFIT FROM EXPERIENCE

Page 2 of 2

- **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.



#### REAL ESTATE COUNSELORS, PLLC

1717 K STREET, NW, #900 | WASHINGTON, DC | 20006

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

Peter Pokorny focuses on commercial real estate leasing and business transactions. Prior to joining Real Estate Counselors, Mr. Pokorny was counsel to the Real Estate Practice Group of the Pennsylvania Bar Association. He also served as Assistant General Counsel for the Council of Better Business Bureaus, the network hub for BBB's in the US and Canada.