



REAL ESTATE
COUNSELORS

Focus on Leasing: *Renewing the Right Way*



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- **Introduction** – A tenant may renew its lease either by a right to do so under its existing lease, or as a result of negotiations with its landlord. In either case, there are several “best practices” the tenant may wish to adopt, as well as several issues to consider.
- **Best Practices** – Tenants that negotiate the best lease renewal terms are well prepared by having an experienced team early on in the renewal process and by being familiar with the procedures for lease renewal.
- **Knowledge is power** – Involve an experienced real estate broker early on in the renewal process. This benefits even those tenants who already have had preliminary discussions with their landlord on renewing. Brokers are your best guide to what other space is available in a given location, and can let the tenant know what concessions other landlords may be offering (like free rent, a build-out allowance or a moving allowance). Tenants should also protect their interests by engaging an attorney with commercial leasing expertise.
- **Procedures** – Long before the relevant date arises, a tenant should be familiar with the timing and procedures applicable to its lease renewal. These may include:
 - How early can tenant may give its renewal notice?
 - What is the outside date (deadline) when notice must be given?
 - Are there any conditions applicable to the renewal such as requiring the tenant to occupy 70% of the original premises?
 - Is the renewal term rent a fixed escalation of the initial term rent?
 - Is the renewal term rent fair market value?
 - If there is a floor on the rental rate (i.e., not less than last year’s rent)?
 - What are the timing and process for the parties to negotiate the rent?
 - Any method to resolve disputes on renewal rent (e.g., 3-broker method)?



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- **Key Renewal Issues.** Several significant business and legal issues arising in even seemingly basic lease renewal transactions are discussed below.
 - **Amendment** – Always confirm the details of a lease renewal in an amendment signed by both parties. Even for straight-forward transactions, the tenant will benefit from the clarity that an amendment provides.
 - **Renewal Terms** – If not already specified in the tenant’s lease, a tenant should clearly set out the length of the renewal term, the base rent, rent escalation factor, and details for operating expenses and taxes (for net leases).
 - **Base Year Issues** – In leases where the tenant pays increases in operating expenses, taxes and insurance over the amounts of such charges in a “base” year, a tenant should negotiate for a new base year to apply to those charges during the renewal term. In addition, the tenant should require that the base year charges be grossed-up (i.e., increased) to reflect 100% occupancy, unless the tenant is fairly certain the building is fully leased (or nearly so).
 - **Landlord Obligations** – The renewal amendment should address any issues the tenant may have had with landlord’s maintenance in the past. If the landlord has promised it would refurbish the lobby, elevators, or make any other improvements, the tenant should make sure to address such obligations in the renewal amendment.



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▪ Key Renewal Issues (cont.)

- **Lease Clean-Up** – Tenants should use the lease renewal as an opportunity to clean-up their lease by updating any notice addresses that may have changed, as well as by making sure that the renewal amendment accurately references all prior lease amendments and any significant side-agreements it may have with the landlord.
 - **Lease Improvement** – Tenants with negotiating leverage can use their renewal to improve their lease rights. They can negotiate for expansion rights, a right of first refusal to lease vacant space, or a right for further lease renewals. Such tenants may also consider addressing permitted transfer rights (e.g., the right to sell tenant's business and transfer its lease without landlord consent). Tenants that have made significant alterations to their leased premises may use their renewal negotiations as an opportunity to have the landlord confirm what improvements (if any) the tenant must remove when the lease term expires.
 - **Other Issues** – Tenants with negotiating leverage may also consider requiring the landlord to confirm the tenant is not in default under the lease. All tenants, if faced with a provision that protects only the landlord, should request the language benefit both parties. Lastly, consider the impact of the lease renewal on any lease guaranties and parking rights.
- **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.



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