



REAL ESTATE  
COUNSELORS

## Surrendering the Premises

### *How to avoid the unexpected*



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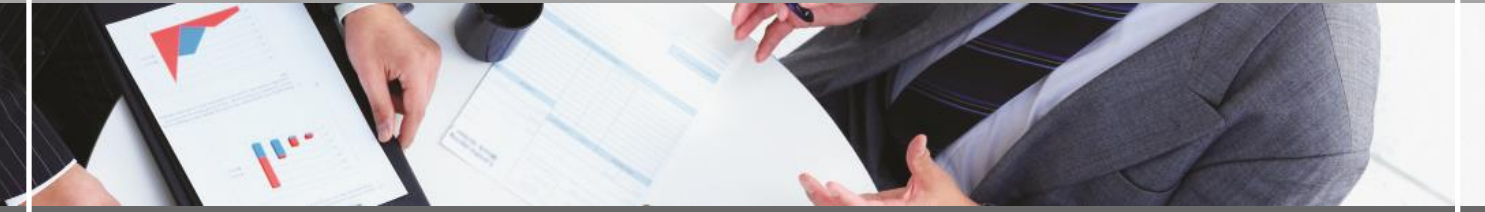
- **Introduction** – When a lease expires, the tenant surrenders its premises to the landlord. The same is true if the tenant contracts a portion of its space, or relocates from existing space to other space in a landlord’s property. Here are some key issues for a tenant to consider, to avoid unexpected obligations and expenses when it surrenders any leased space.
- **Alterations** – Ideally the tenant should ensure when it surrenders the premises, the tenant does not have to remove and restore the initial build-out of the premises (whether performed by the landlord or the tenant). A tenant should try to get its landlord to agree that any alterations the tenant makes during the term (after the initial build out), may remain in the premises when surrendered, *unless* the landlord has notified tenant that such alterations must be removed at the time the landlord provided its approval for such alterations.
- **Signage** –A tenant should review its lease regarding removal of signage. Retail leases commonly require the tenant to remove all of its exterior signs (whether on the premises or elsewhere on the shopping center) when surrendering the premises, any damage caused by the installation or removal. Office tenants with exterior signage often have similar provisions in their lease.
- **Wiring** – Years ago various tenants used various types of data and telephone cabling. Currently CAT5/CAT6 is standard. A tenant should try to get the right to leave such cabling when the term ends, provided the same was properly installed in accordance with lease requirements.



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- **Existing Improvements** – Many businesses lease or sublease space that was previously built-out by a landlord or tenant for a prior lease. Occupants of such space should confirm that they have no obligation to remove any improvements that were existing on the date that possession was delivered.
- **Security Deposit** – A tenant should review its lease to confirm when its landlord must return the security deposit to the tenant after the lease ends. The tenant may also want to have a pre-surrender walk through of its space to confirm with the landlord that there are no outstanding issues prior to surrender so that the landlord does not withhold any amount from the security deposit.
- **Personal Property** – It is customary that a tenant has the right (and the obligation) to remove its furnishings, machinery, trade fixtures, equipment or any other property that it placed or installed in the premises. Sometimes certain improvements or equipment might be deemed “fixtures” or otherwise be deemed part of landlord’s interest in the building (e.g., a walk-in freezer). If the tenant has any such concerns, they should address such items specifically in their lease.
- **Unknown conditions** – Leases often require a tenant to surrender its space in the condition it was delivered on commencement, or state the tenant doesn’t have to remove landlord approved alterations. A tenant who is the successor or assignee of an original tenant may not, however, know what the original condition of the space was or what alterations the landlord approved. A tenant may need to research prior corporate correspondence to determine its surrender obligations, or attempt to clarify its surrender obligations with the landlord (and then document the same in a lease amendment).
- **Holdover** – Aggressive leases may provide that a tenant who does not properly surrender and vacates the premises is considered a holdover tenant subjecting the tenant to the penalties under such provisions.
- **Next Step** – This is a brief overview of issues that a tenant should be aware of prior to surrendering space at the end of its lease term or in connection with a contraction or relocation. An experienced commercial real estate attorney can best advise a tenant and protect its interests.

