

TIPS FOR RETAIL LEASING OF AN INSURANCE OFFICE

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The LAAA hosts meetings every month in Whether due to an expanding business or downsizing, insurance brokerages have many decisions when renting a retail location. Finding a

location and negotiating a lease is, of course, a very important business decision that will impact businesses for many years.

This article provides helpful tips for LAAA members who are interested in pursuing a new retail location and need advice on how to negotiate a commercial lease and which important provisions to include in the lease. Although this article's focus is on retail leases, these tips should help a tenant in any commercial lease:

1. Broker: It is crucial to select a knowledgeable real estate broker who knows the geographic location. Verify that your broker has experience in retail leases. The broker who assisted in leasing your corporate office may not be experienced in retail leases.

2. Letter of Intent: Once a location is found, the real estate broker will typically negotiate with the landlord's broker or management company. The negotiation is documented in the letter of intent. This is a non-binding document that acts as a checklist of the basic lease terms. Legal counsel may not be involved at this point which often results in overlooking important legal issues the parties did not anticipate and that experienced counsel could have avoided.

3. Rent: "Gross" vs. "Net": Of course, the monthly rent amount is of paramount importance to the tenant. Retail leases are typically "Net" or "triple net". In these leases, the landlord receives the rent "net" after passing through costs of taxes, insurance

and maintenance of the project to the tenants (in a gross lease, the tenant pays a gross amount of rent, which the landlord then uses to pay expenses of the Project). Attempt to negotiate a cap on annual rent increases; e.g., by no more than five percent (5%) per year and negotiate a cap on how much the pass through costs can increase each year. Attempt to resist paying the increase in real estate taxes due because of a landlord's transfer of ownership of the Property (so-called "Proposition 13 Protection"). Make sure capital improvements, including roof repair and major systems at the retail location, remains with the landlord and are not charged to you.

4. Construction. Many leases require the landlord, at its expense, to perform the work necessary for the tenant to occupy the Premises or provide an allowance for the tenant to construct its improvements for its specific use. Carefully address the nature and scope of the improvements to be constructed at the premises paying particular attention to the cost of such improvements and the party responsible for such cost. Make sure to analyze the overall lease cost to avoid getting tempting up-front improvement funds only to pay it back in higher monthly rent.

5. Rent Commencement: Generally, where the landlord performs the work, they will want rent to commence upon the delivery of possession of the premises. Where the tenant constructs its own improvements, landlords will often provide a period of time that is rent-free for the tenant to conclude its improvements and open for business. There are two important points on this issue. (1) If the landlord performs the work, negotiate for access to the premises before your rent payments begin to install phone, data, modular space and other items to prepare for opening. (2) Negotiate free rent (perhaps 30-90 days) after the construction is complete to allow the business to get up to speed, hire personnel and get past start-up costs.

6.Term of Lease: The length of the lease is important so pay careful attention to your company's growth plans. Keep in mind that typically the longer the lease term, the more upfront concessions the landlord is likely to provide. On the other hand, you may want a shorter period with an option for the tenant to renew the lease when the original term expires.

7.Early Termination: Given the often unpredictability of retail locations or due to overall company growth (or reductions), in some instances, try to negotiate for a right to terminate the lease early after a certain amount of years. Normally landlords resist providing tenants with early termination options as the ability to terminate results in a decrease in the value of the building for both financing and sale purposes. However, if successful, expect to reimburse the landlord the unamortized construction costs the landlord incurred, brokers commissions, other upfront costs plus an additional termination fee.

8.Security Deposit; Guaranties: Most leases will require a money security deposit, often one to two months rent. Because you should always enter into the lease through a business entity such as a corporation, landlords often seek a personal guaranty of either the tenant's owners or in larger organizations, the parent company. Attempt to avoid a lease guaranty if your company's financial statement is strong. If not, seek a limitation of the guaranty, perhaps an amount equal to six months of the basic rent payments plus any unamortized construction costs.

9.Use of the Premises: Negotiate a broad use to allow retail visitors, office use and other lawful uses that do not increase the landlord's liability at the Property. This provides flexibility in case you need to sublease the space as it broadens the potential pool of people who can take over the lease.

10.Assignment and Subletting: This may come about because of a downturn in business or growth requires moving to a larger space. There should be flexibility to assign a sublet to financially qualified replacement tenants. Given consolidation and mergers in the industry, make sure the lease allows assignment to companies under common control with your company or a successor corporation in the event of sale of the brokerage.

11.Other Tenant Clause: Sometimes a retail location is attractive because of large tenants or so-called anchor tenants that draw traffic to a center. If the anchor leaves, a tenant should include a provision in the lease that allows for termination or more likely a reduction in rent until a new anchor tenant begins operating at the project. Related to this issue is a landlord's attempt to try to relocate a tenant to another location in the project to make way for a larger tenant. Resist relocation or negotiate strong consequences such as the payment of all costs to move, similar street views and the right to terminate the lease.

12.Exclusive Use: An exclusive use provision prevents the landlord from leasing space for the same type of use within the project. This prevents a reduction in sales and can be important for walk-in customers.

13.Signage: As a retail location, you should be able to install identity signs on the Premises to the maximum extent permitted by local laws and on pylon, monument or eyebrow signs at the project. The placement of the sign should be carefully considered, including the size, location and placement on multi-tenant signs.

14.Other provisions to include are ample parking for employees and guests. Make sure to understand whether the landlord will supply security. Finally, the current real estate downturn has caused many landlords to be in default with their lender. Be sure to make sure that is not the case and insist on a "non-disturbance" provision so if a lender forecloses on the landlord, your lease remains intact for any future owner of the project. Without such a provision, the lender may be able to terminate the lease as a matter of real estate law.

While obtaining all of these concessions may not be possible, it is crucial that LAAA members fully understand each of the provisions in the lease and all of the legal ramifications so your rights are protected.

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