



WHERE DO I SEND MY RENT?

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Presented To:

ATLANTA COMMERCIAL
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SEMINAR

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WHY ARE LEASES IMPORTANT TO YOU?

- Often a first opportunity to represent a new client
- Good way to get started in brokerage
- Great opportunity to grow with client
- “Follow the people; follow the business”
 - ✓ Career mobility yields opportunities to get new business from old friends
 - ✓ Acquisitions/mergers/dispositions = change, and results in some gains, some losses of business

BROKER'S ROLE

- Quarterback the Deal
- Help Identify/Select Team Members
- Stay “at the Table” and be an Active Participant
- Add Value Whenever/Wherever You Can
- Be Proactive
- Facilitate Performance by Other Team Members
- Make Your Client Look Good!
- Stay Involved Throughout the Tenancy
- Help Solve Problems That Arise

WHY LANDLORD PROBLEMS BECOME TENANT PROBLEMS

- Failure to fund allowances for build-out, architectural services, tenant improvements, and/or moving
- Failure to properly maintain, repair and operate the building
- Failure to pay mortgage
- Possible threat to lease and tenancy if proper “SNDA” is not in place!

WHY LANDLORD PROBLEMS BECOME BROKER PROBLEMS

- Failure to pay cash-out commissions
- Failure to pay annuitized commissions
- Possible loss of future commissions on extensions, expansions and/or renewals, or purchases

POSSIBLE TENANT SOLUTIONS FOR LANDLORD DEFAULT

- Landlord Default / Tenant Remedy Clause
- Rare? Atypical? No Provision? Landlord Amnesia?
- Try to Negotiate at “RFP” Stage
- Kinds of Landlord Defaults:
 - ✓ Monetary
 - ✓ Non-Monetary
 - ✓ Failures to Perform or Defective Performance

POSSIBLE TENANT SOLUTIONS FOR LANDLORD DEFAULT

(cont'd)

- Landlord Default/Tenant Remedy Provisions:
 - ✓ Notice Requirements
 - ✓ Landlord Cure Periods
 - ✓ Lender Cure Periods
 - ✓ Default Interest
 - ✓ Self-Help
 - ✓ Off-Set / Withhold / Escrow Rent
 - ✓ Suits for Money Owed
 - ✓ Injunctive Relief

“SNDA” ISSUES

- Subordination, Non-Disturbance and Attornment Agreements
- Not required in many “Standard” Landlord Form Leases
 - ✓ Often a “1-way” Street: Subordination is mandatory, but “Attornment” and “Recognition” are at Lender’s Sole Option
- Results: Tenant’s Lease is “At Risk” through No Fault of its Own

“SNDA” ISSUES

(cont'd)

- Foreclosure of a mortgage technically terminates a subordinate Lease as a matter of law
- Typical Landlord Form Lease gives the Mortgagee the Option or Election to Require the Tenant to “Attorn” to the Mortgagee or Purchaser at Foreclosure as the New Landlord, or, alternatively, to allow the Lease Termination to remain effective
- This is a REAL issue in today’s environment, and can imperil or force renegotiation of a favorable lease negotiated in a pro-tenant market

“SNDA” ISSUES

(cont'd)

- Tenant Needs to Couple “Recognition” of Lease and Tenancy by Mortgagee to “Attornment” Obligation of Tenant
- Tenant Should Try to Condition Obligation to Attorn to Future Mortgagees to Getting an SNDA, Including Linked Attornment and Recognition
- Tenant Should Try to Get a Current SNDA from all Current Mortgagees as a Condition to the Lease
- Try to Negotiate at RFP Stage

“SNDA” ISSUES

(cont'd)

- Try to get SNDA Protection During Renewal / Extension / Expansion Negotiations, Even if Tenant’s Current Lease Doesn’t Give Tenant SNDA Protection
- Try to get During “Blend & Extend” (or “Pretend”) Negotiations and Amendments

OTHER LEASE ISSUES

- Estoppel Certificates
- Holdover Provisions
- Assignments of Lease and Rents
- Landlord's Failure to Deliver
 - ✓ Holdover Costs
 - ✓ Delay Damages
 - ✓ Temporary Premises
 - ✓ Double Move Costs
 - ✓ Termination of Lease
 - ✓ Lost Opportunities?

OTHER LEASE ISSUES

(cont'd)

- Landlord's Failure to Fund Build-Out
- Lender Failure to Fund to Landlord
- Alternatives to Secure Landlord funding Obligations:
 - ✓ Letter of Credit
 - ✓ Escrow Deposit
 - ✓ Right to Pay and Offset
- Exculpation of Landlord

CLOSING OBSERVATIONS

- Leases are important to our clients so they need to be equally important to the brokers and attorneys working on them.
- Unlike a purchase and sale transaction, in which the Contract and the parties' relationship are essentially consummated at closing, a Lease creates a 5, 10 and sometimes a 20 year contractual relationship, so the Lease needs to be durable for both parties.
- Leases represents a really good opportunity for brokers and attorneys to work together and help each other and mutual clients.

THANK YOU!
HAVE A GREAT DAY!



[Polite Applause]