



Client Alert



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The Lease – How it Evolves

Maybe it is just me, but recently I have read a number of leases which are, at a minimum, badly out of date. In many cases, this is due to the fact the Landlord had the text initially drafted to contemplate their then new project, spending monies to compile a text which was both correct and acceptable, however, as these projects change so too does the need to modify the text in order to better set forth the various requirements of the Tenant.

Most leases need look no further than the construction exhibit, often replete with totally unnecessary marketing representations. The exhibit is often best suited for new construction and not second (or third) generation space. This text is, after all, the guide which sets forth the obligations of each party, mostly those of the Tenant, and it needs to be clear. Is the space “broom clean”? Do mechanicals work? What is the nature of the HVAC? Are the utilities sufficient?

Similarly, and from the Landlord perspective, there have in the last few years been many potential changes in rent(s). Is CAM pro-rata or is it fixed? If fixed CAM, does it reset in any option period? In fact, is Minimum Rent for an option fixed or is it set just before the option? How does the lease handle potential rent taxes (by whatever name)?

Leases also refer to the concept of “Shopping Center”. Does that correctly embrace new uses which are not retail such as the growing trend of healthcare? Are there complications in the hours of operation requirements and/or the co-tenancy requirements?

In sum, the lease should generally not be tweaked and modified over and over, however, it needs to be thoroughly reviewed from time-to-time in order to fit the then current realities. The expense to have it revised should be considerably less than the needless expense of working with an out of date document.

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