

# views you can use

Commercial Real Estate By Stephen A. Cross, CCIM

## Level the Playing Field at Lease Renewal Time



**P**roperty owners are typically their most accommodating during the period before the lease signing. At renewal time, however, some landlords change their ways and use intimidating tactics to take advantage of otherwise savvy business owners and corporate decision-makers.

Note that while property owners ultimately make the decisions regarding rate, conditions, concessions and the like, they typically employ property managers and real estate agents to shield them from the deal-making and daily operations.

**Landlords have advisors and, therefore, so should tenants.** While property owners generally eat, drink and sleep commercial real estate, most tenants consider the leasing process more of a chore than an opportunity to shore up the bottom lines of their businesses. Landlords not only know this, but they rely upon it. Tenants who go it alone are vulnerable to exploitation for three reasons: (1) leases are completed infrequently, typically every three to five years (read: tenants never get very good at the process); (2) comparative data about similar transactions are non-existent; and (3) the number of variables affecting commercial leases makes it almost impossible for even the most sophisticated professionals to make informed decisions. **TIP:** The better the preparation, the better the result. So take a page from the landlord's playbook and hire your own real estate advisor to educate and insulate you throughout the search and negotiations. An experienced, objective advisor can save you many times the cost of their representation.

**Insist on market concessions.** At renewal time, you'll be asked to pay the landlord's asking rate, variously referred to as the going or market rate. However, tenants are seldom offered market concessions. Concessions are incentives that lower the cost of occupancy and can include, among other things: a reduction in the asking rate (typically five to ten percent), free rent (one month free for every year of the term) and a reasonable tenant improvement allowance (\$3 to \$10 per square foot). **TIP:** Tenants considering a lease renewal should require the same terms, conditions and concessions that any prospective tenant would be offered and terms equal to that available elsewhere.

**Advance all dates.** Most full-service and gross leases contain a provision requiring the tenant to pay for increases in the landlord's operating costs greater than the amount due in the first year of the lease (the *Base Year*). Operating expenses generally increase three to five percent per year, causing your total rent obligation to escalate. **TIP:** Advancing the Base Year to the first year of the renewal period resets the excess operating expenses to zero. If the landlord refuses to advance the Base Year, decrease the proposed Base Rate by a like amount.

**Be aware of false deadlines.** Some landlords use the high-pressure techniques you'd expect to encounter when buying a used car, such as telling you their offer is only valid if you sign today; or that if you don't agree to their terms, they'll show the space to others. **TIP:** The landlord's initial offer is seldom their best. Also, these tactics imply that other tenants are waiting in the wings to lease your space at the higher price, which is generally unlikely.

**Size matters.** Another way that landlords increase their revenue stream is to artificially grow the building. They do this by re-measuring the property based on so-called current industry standards and attempt to pass the cost of this new-found space on to each tenant. **TIP:** Insist on a field measurement of your space. Be present when it is conducted. Resist paying for area outside the walls of the premises. For example, resist paying for the area under the eaves, aka the drip line. In the event that the space measures smaller than advertised, make certain that the size is corrected in the lease and that the rate is not increased to make up for phantom space. Finally, beware of landlords that negotiate on a per square foot basis, but use gross rental amounts in the lease agreement. Landlords do this to conceal the true (smaller) size of a space.

**Verify and document everything.** Claims that "everyone else pays this amount" are irrelevant when deciding how much to pay. In fact, every transaction is unique and tenants not only pay different amounts, but receive a wide range of concessions. **TIP:** Don't base your offer on what others may pay. Reduce your deal points to writing and insist on a written response by a specific date. Make certain that the landlord's response addresses all of your terms, as some property owners provide only partial answers to your questions or simply ignore reasonable requests, hoping that you'll overlook the omissions.

**Don't pay for the landlord's mistakes.** Many investors buy properties with the intention of raising rents as leases expire. Others spend tens of thousands of dollars on capital improvements to the building that have little or no value to tenants. **TIP:** Just because the landlord may have overpaid for an investment property, or improved it, doesn't mean you should subsidize his decisions through higher rents.

**Mum is the word.** Property managers and real estate agents are the eyes and ears of the property owner, and reflect the landlord's temperament and values. Generally they have no authority to act on behalf of the landlord without his/her prior consent. Their tools-in-trade include a friendly manner and the ability to gather revealing information through the guise of innocuous banter – behold and beware of the power of chit-chat. **TIP:** Everything you disclose in 'idle' conversation will be used against you at the bargaining table. So, refrain from discussing your business circumstances, strategies and choices with anyone other than your trusted advisors.

**Final Thoughts.** Even if your present landlord exhibits none of these traits, remain vigilant in understanding and protecting your legal rights, for one day the landlord may sell the property to someone who is not as fair-minded. A reminder to all: Landlords have buildings and luxurious lifestyles because tenants pay rent...not the other way around.

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