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Factors That Affect The Price You'll Pay

To the delight of landlords everywhere, many otherwise savvy business people consider leasing space analogous to leasing a mid-sized car or a really big copy machine ... *it's not*. Knowledgeable insiders compare the leasing of commercial space to the legal system, where parties

with opposing interests square off in an adversarial environment. Generally speaking, the side that is best prepared prevails.

In commercial leasing, "preparation" means the timely discovery of available spaces suitable for your business, identifying landlords who have the most urgent needs, and understanding what rates and concessions can likely be achieved (based on ever-changing market conditions).

The following discussion highlights decisions, actions and factors that can affect the price you will pay to lease commercial space and offers tips on how to protect the interests of your business.

RE-THINK REPRESENTING YOURSELF

Doing it yourself is only practical when you have access to the necessary tools, and can reasonably expect good results. That's why my dentist doesn't give real estate advice and I don't perform root canals.

In commercial real estate, comparative data on lease transactions is proprietary, and databases with up-to-date and reliable information detailing vacancies are not readily available to the general public. The result of this *intentional* scarcity of information is that business owners and corporate decision-makers who choose to represent themselves remain grossly under-informed and open to exploitation at every stage of the search and negotiation process.

Here's the bottom line: self-represented (read: "unrepresented") tenants are no match for experienced, well-informed landlords and their legions of agents, brokers and property managers, whose core business is achieving the highest rents possible.

TIP: Where significant disparities in experience and access to information exist, always retain competent, independent representation to protect your interests.

DUAL AGENCY

The Industry's Dirty Little Secret: When one or more agents from the same firm represent both landlord and tenant in the same transaction, a "dual agency" exists. Even with both party's prior agreement, this arrangement *always* favors the landlord because "listing" agents have an existing fiduciary duty to protect the interests of their "client," the landlord; tenants are merely viewed as "prospects." My advice is to never agree to a dual agency.

The legal profession has long recognized the potential conflict of interest when one or more attorneys from the same firm attempt to represent both parties in a dispute, and have barred this practice on ethical grounds. In my opinion, real estate agents and brokers face the same inherent and unavoidable conflict of interest when trying to represent both landlord and tenant, or seller and buyer, in the same transaction. To the detriment of tenants and buyers, this practice remains widespread in the real estate industry.

In order to flush out potential conflicts of interest, question all real estate agents about any listings they *or their company* may have. You may also wish to have them sign a disclosure/confi-

dentiality letter before discussing your requirements.

TIP: If you feel you may have been the victim of an undisclosed or ambiguous Dual Agency, contact the Arizona Department of Real Estate (go to www.re.state.az.us or call (602) 468-1414, ext. 225) to initiate an investigation for unethical behavior by licensed real estate agents and brokers. There is no cost for this assistance.

GET VALUE FROM THE COMMISSION

The real estate industry is unique in that commissions are routinely factored into the cost of marketing properties offered for lease and sale, and typically amount to 5%-6% of the value of the transaction. Commissions are generally split evenly between the agents representing each side of a transaction.

For example: A five-year lease on 2,000-square-foot of office space, with an average annual rental rate of \$ 24 per square-foot, has a gross value of \$ 240,000 and will generate \$ 12,000 to \$ 14,400 in commissions. If you have independent representation, half of the commission, or \$ 6,000 to \$ 7,200, will be paid to your representative. If you represent yourself or agree to a dual agency you receive no value from the commission, but the full amount is still paid to the listing agent(s).

TIP: Take advantage of your half of the commission by hiring an experienced, competent, and independent real estate advisor who works exclusively on your behalf.

TOO MUCH TALK

When speaking with any leasing agent or property manager your only objective should be to obtain useful information, not to give it. The more you reveal about your businesses' circumstances the more vulnerable you become. This is equally true for new leases and renewals.

Never disclose your budget, the expiration date of your lease, your businesses' circumstances, or other buildings you may be considering to a landlord or any of its representatives ... no matter how charming or persistent they may be. Remember, everything you disclose can, and will, be used against you at the bargaining table.

TIP: Instruct your entire staff that all questions regarding your current space or future requirements are to be referred to you or your real estate advisor ... no exceptions.

FAILURE TO ASK THE RIGHT QUESTIONS

When it comes to leasing commercial space, real estate agents and property managers are generally required to answer only the questions you ask, ... not the questions you *should* have asked. Many times it's the questions you fail to ask that end up costing you money.

TIP: Do not underestimate the importance of performing your due diligence (read: do your homework). By becoming fully-informed or having a representative on your side who is, you will save thousands of dollars in excess rental payments over the lease term.

SUMMARY

The objective of commercial real estate investors, landlords, agents and property managers is to make money ... *not friends*. Remember too, that every economic term and condition must be negotiated prior to signing the lease agreement. Resolve to pay as little as possible and seek competent, qualified representation to protect your interests. ☺

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