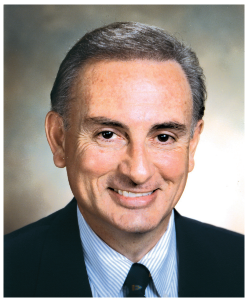
Feature

Tips for Restaurant Owners and Small- to Medium-Sized Retailers



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Competing for sites against large chains that have in-house real estate departments and unlimited budgets can be a daunting task. Unless your core business is commercial real estate, you may not be aware of issues that are critical to making fully-informed leasing or buying decisions, or who to trust when evaluating the complex variables unique to retail transactions. Here are some practical guidelines, disclosures and strategies intended to help protect the interests of restaurant owners and small- to medium-sized retailers.

EVALUATE SITES CAREFULLY. "Hard corners" with good visibility from the street are generally more desirable than interior locations; free-standing buildings can be better choices than in-line space. *Strategies:* 1. Obtain detailed demographic data for every intersection under consideration. These reports are invaluable and should be provided free of charge by your real estate advisor. 2. Visit sites at different times to verify activity, traffic patterns and potential competition. 3. Restaurateurs should also identify the "go to work" and "go home" sides of each street.

PROTECT YOUR USE. It is reasonable to require protection for your concept within a shopping center. *Strategy:* Craft the "Exclusive Use" clause broadly enough to describe those things that make your concept unique. Also, make certain the "Permitted Use" language covers your ancillary activities. As many shopping centers are a patchwork of adjoining parcels with different owners, exclusive uses are protected for your parcel only.

NEVER PAY THE ASKING PRICE. "Asking price" is to commercial real estate what "sticker price" is to automobiles, merely the negotiation's starting point. Because neither property owners nor agents expect to receive the asking price, the real questions become: "How low can the price go?" and "What incentives and concessions can the tenant or buyer reasonably negotiate?"

RESIST PERCENTAGE RENTS. Percentage rents are additional sums due the landlord and are based on the natural "breakpoint" of your base rent. Calculate this number by dividing your annual base rent by the proposed percentage rent figure. Once your yearly gross sales hit the breakpoint, you will owe additional rents. *Strategies:* 1. Eliminate the percentage rent clause. 2. Exclude pick-up and delivery, and Web-based sales from gross sales. 3. Negotiate an artificial breakpoint - high enough to ensure the percentage rent clause becomes moot.

BE THE "SECOND MAN" IN. If there is intense competition for a location, and prices no longer make sense for your budget, let a deep-pocket operator lease and improve the space … and pay the high rental rate. The property may come back on the market, this time with the essential improvements. You may also find landlords to be more negotiable with vacant buildings on their hands.

SIGNAGE = ADVERTISING. Building signage and a prominent position on monument signs should be viewed as high visibility advertising - and the more visibility you can get the better. *Strategy:* Negotiate both current and potential signage opportunities in the original lease agreement.

GET ENOUGH HVAC. Air conditioning is expressed in terms of tons. Retailers typically need 1 ton for every 300 SF of floor space. Restaurants can require three to four times that amount, or 1 ton per every 75 SF to 100 SF. *Strategy:* As the HVAC systems are permanent improvements and add value to the building, negotiate adequate tonnage as part of the landlord's contribution.

MAXIMIZE THE FIXTURIZATION PERIOD. Restaurants and retailers requiring plumbing, HVAC, and/or electrical work generally require 90 to 120 days to build out a space, including the time it takes to draw plans and obtain necessary approvals**.** *Strategy:* Negotiate 120 days free of base rent *and* NNN expenses. Also, insist on being able to open for business during this period at no cost. If your construction should be completed early this could garner you an additional 30+ days of free rent.

NEGOTIATE THE SHORTEST TERM POSSIBLE - WITH OPTIONS TO EXTEND. Concessions are generally a function of initial lease term and are used to encourage tenants to lease space for the longest period possible. At some point, however, longer terms yield no additional concessions. *Strategy:* Determine the minimum term with the maximum concessions. Then, negotiate renewal options with fixed or maximum rental escalations. Depending on market conditions at renewal time, the knowledgeable business owner may be able to negotiate additional concessions.

BEWARE OF POTENTIAL CONFLICTS-OF-INTEREST. Because the interests of property owners are the opposite of yours, leasing or buying commercial real estate is an adversarial process. With tens-of-thousands of dollars at stake each party should have independent representation, just as in a court of law. However, many real estate agents do their best to persuade tenants and buyers that one agent, or multiple agents from the same company, can effectively represent the interests of both parties in the same transaction. This practice is known as a "dual agency" and *always* favors the property owner and the self-dealing agent, who collects the entire commission. *Strategy:* Never hire an agent who lists properties to represent your interests. Because of their fiduciary duties to property owners, all listing agents have an inherent conflict-of-interest when also attempting to represent the interests of tenants and buyers.

QUALIFY YOUR ADVISORS. Your choice of advisors determines which properties you are shown and, ultimately, how much you will pay. Agents for property owners are generally qualified only in sales, and focus on getting the highest prices possible (that's how they obtain and keep listings). *Strategy:* Seek out an expert with significant experience in solving *your* problems. And make certain your selection holds the CCIM designation, the gold standard of certifications in the commercial real estate industry. No other designation requires the level of competency, experience, education and ethical standards of a CCIM.

CLOSING COMMENTS. At the end of the day, your leasing or buying decisions should be based on the combination of these objective factors: location, demographics, condition, concessions, contributions, comparables and overall cost. Purposeful negotiating is prudent, and will help ensure that you don't wind up working for the landlord. SAN

If you would like to learn more about commercial real estate, please visit www.crossrealty.com and go to the "Articles" section.

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