

A Tenant's Guide for a Successful Lease Renewal

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As your lease expiry date approaches, you will need to decide if you want to remain in your current facility, or move to an alternative location. This article attempts to highlight some of the key issues for consideration in dealing with a lease renewal, so that you can achieve the best possible outcome for your business.

Give Yourself Plenty of Time:

It is important to have “time on your side”, to insure that you are not forced into a bad negotiating position, or an operational dilemma in the event that you fail to secure a renewal of your lease. As a guide, we suggest that 12 months before your lease expiry date (do you know when that is?) you should be reviewing your real estate needs and developing an appropriate strategy.

Remember that while you may want to remain in your current space, a relocation may be forced upon you, should the landlord have other plans for that space (such as accommodating an expanding tenant in the building), or if you can't agree upon acceptable terms for the new lease. Therefore, you should leave enough time to find alternative premises in the event that you are unable to renew your

lease for whatever reason – a 6 to 9 month lead time is probably a reasonable period in which to identify and secure and get operational in a new facility, although this may vary depending upon the amount of construction work required. I.e. try to secure your lease renewal at least 6 to 9 months before your lease expiry date.

If your lease renewal is pursuant to an option in your existing lease, then there are often strict notice periods that have to be adhered to - typically you have to give the landlord 6-12 months notice of your intention to renew the lease. If you miss providing the landlord with such notice, then your right to a renewal will likely be lost.

Understand Your Negotiating Position:

Like any negotiation, the better informed you are about your position and that of the other party (in this

case your landlord), the greater will be your chances of achieving the outcome you desire. To make such informed decisions, it will be prudent to create an appropriate team that includes a real estate attorney and also a real estate advisor. This is important as you will then have a team that will be looking out for your best interests, because the landlord (or his agent) will primarily be looking after his interests, not yours.

A good attorney will be able to evaluate the terms of any new lease and also provide pragmatic legal advice. A good real estate advisor will be able to negotiate effectively on your behalf with the landlord, advise you as to market conditions and values as they relate to your space and also identify suitable alternatives in other buildings (and not just those owned by your landlord) that give you some negotiating

leverage and may also be needed in the event you are unable to renew the lease on acceptable terms.

The New Rental Rate:

Unless pre-determined under any renewal option in the current lease, then the new rental rate will be determined by negotiation between the landlord and the tenant. Sometimes an option clause may specify the rental rate but usually it describes a formula that is often related to market value e.g. 95% of fair market value, although this may be negotiable as well.

Your real estate advisor will be able to provide the relevant market data to establish what would be an appropriate market rental rate for your space, taking into account the negotiating leverage available to you and trends in the marketplace. Beyond the “threat” of moving elsewhere, the basic leverage you have if you stay put results from; 1 – the landlord avoids any loss of income during the void period to secure a new tenant for your space. 2 – if you will be utilizing the space “as is”, then the landlord may be saving money because he will not incur the costs of any improvements for a new tenant. Conversely, the landlord will be trying to offset the value of these items to you, against the costs of moving your business and the associated “hassle factor” involved in any relocation.

Some Other Issues to Consider:

When renewing an existing lease, hopefully most of the documentation will still be acceptable as it was previously agreed upon. As a result, often a lease renewal document is just an addendum to the existing lease, with a description of the new rent. However, there may be some other terms and conditions that need to be renegotiated or inserted, to reflect current market conditions. Here are a few items worthy of consideration.

1 – Base Year: The base year should be updated to reflect the year in which the new lease is signed. Otherwise this could be a significant “hidden cost”.

2 – Security Deposit: If you have a credible record with the landlord for the payment of your rent during the previous lease, then you might be able to reduce the size of any security deposit he is holding.

3 – Improvements: A lease renewal is a good time to negotiate with the landlord to carry out the desired work. If none is required, then you should try to get the landlord to discount the market rent to reflect the savings he has made versus leasing space to a new tenant.

4 – Expansion Rights: If you have established a good track record with the landlord during the previous lease and have future expansion plans, then you might try and get expansion rights to other space in the building.

5 – Legal Review: Have your attorney review the lease to identify any onerous terms that need to be watered down, or brought up to date to reflect current market conditions. In particular, look at the sublease and assignment clause, as these will impact your ability to reduce your financial obligations in the future, should the space not work for your business anymore.

6 – Renewal Option: To insure flexibility in the future at the end of the new lease, try and secure an option to extend it at the end of the term.

Conclusion:

The expiry of an existing lease may present both challenges and opportunities for many tenants. To insure that you can take advantage of the opportunities and minimize the risks, it is advisable to plan well ahead of your lease expiry date, form an appropriate advisory team to represent your interests with the landlord and then take timely action to insure that you can secure the right space on the best possible terms for your business.

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