



N.Y.C. Green lease language to address split incentive

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Over the summer, N.Y.C. announced that the law firm WilmerHale signed a lease to relocate its offices into Silverstein Properties' LEED Gold-certified 7 World Trade Center. The building - which is now 100% occupied - was the first commercial office building in the country to earn a LEED Gold rating, so any lease there is of interest to the green real estate industry. But the WilmerHale lease marked another important first: it incorporated new green lease language developed by the mayor's Office of Long-Term Planning and Sustainability.

The green lease language was drafted in an effort to resolve the split incentive that is pervasive throughout most N.Y.C. commercial office leases. The split incentive exists when a landlord pays for building capital improvements but fails to benefit from any corresponding reductions in operating expenses because the tenant pays for operating expenses. Although some leases do allow landlords to pass capital improvement costs through to tenants, the time frame for recovering those costs can stretch for decades and creates a barrier to owners making any energy-efficient capital improvements in the first place.

Developed by NRDC's Green Lease Forum, the N.Y.C. green lease language is based on two concepts. The first provides landlords with a guarantee that they will recover from tenants the costs of any capital improvement that addresses energy efficiency over the projected payback period of the improvement and not its useful lifetime. Second, it ensures that tenants will still realize a cost savings from the improvements. So, once improvements are made, tenants not only receive the benefit of actual savings, but they will pay to the landlord 80% of the project savings as determined by a third-party NYSERDA-approved engineer as part of building operating expenses. And after the payback period compensates the landlord for its initial investment, the tenant continues to enjoy the energy savings. N.Y.C.'s own commercial office leases are negotiated by the Dept. of Citywide Administrative Services, which has agreed to add the green lease language to all of its new leases. The public sector has historically taken a leadership position in adopting policies at the vanguard of energy efficiency and green building. For example, N.Y.C. adopted its own Local Law 86 (requiring LEED Silver certification for most public projects) in 2005, well before the growth in private third-party green building certification during the second half of the decade. The green lease language promises a similar opportunity for the public sector to demonstrate best practices in addressing the split incentive and disseminating green leasing principles throughout the private sector during the rest of the decade.

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