



Commercial leasing - Don't overlook the obvious essentials

October 12, 2007 - Long Island

A commercial lease involves many provisions - rent, options, scope of services, escalations, responsibilities for maintenance and repairs, and a host of other terms. While it is easy to become immersed in negotiating assignment/sublet provisions or other potential "hot buttons," attention to the obvious essentials is critical in the long run. Consider, for example, the consequences of not verifying at the outset the form of legal entities and names of the landlord, tenant and guarantor. This information is critical in order to accurately perform the due diligence that any prudent landlord or tenant should undertake. At a minimum, this would include review of a potential tenant's financials by the landlord and the tenant obtaining a last owner search to verify who, in fact, owns the premises. Proper identification of the parties also becomes critical if the need to resort to litigation should ever arise (not a pleasant prospect, but the familiar adage about the value of an ounce of prevention will prove to be particularly true here). Information regarding corporations, limited liability companies, limited partnerships and limited liability partnerships is available at the New York State Department of State's website: www.dos.state.ny.us (simply click on the link for "Search the Corporations/Business Entities Database"). Information concerning sole proprietorships and general partnerships can be obtained from records maintained by the clerks of the county(ies) in which the business is operated (many county clerk's offices now maintain websites which can easily be located through the use of an Internet search engine, however the ability to review records on-line varies from county to county).

Another commercial lease essential deserving of attention is the description of the leased premises. Because many substantial commercial lease transactions involve complex scenarios such as extensive construction or alterations to the premises, or relocation of demising walls, the inclusion of non-contiguous space, or partial use of a basement or other common areas, the parties should attach as an exhibit to the lease a detailed diagram of the leased space to minimize the possibility for misunderstandings as to what space comprises the leased premises. The premises should also be identified by unit number, street address and/or any other available designation. This will facilitate the giving of notices to the tenant. The address for notices is important because even though the tenant may designate a separate address for notices under the terms of the lease, there are statutory provisions, including those pertaining to eviction proceedings, that require notices to be delivered or mailed to the leased premises. From the landlord's point of view, this is also important because a sheriff or marshal will not execute on a warrant for eviction unless the premises in question are readily and correctly identified (down to the precise spelling of the street name and other elements of the address).

The detective work to ensure accuracy of this information at the outset is easy enough to perform and essential to minimize the potential for future costs, complexities, and disagreements.

Jane Myers, Esq., is the president of Jane M. Myers, P.C., Jericho, N.Y.

