



Hunt Corp. Commercial Real Estate Q&A: Review the proposed lease – twice! - by David Hunt

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Q: We have found the right office space and will be receiving a proposed lease from the landlord. Obviously, we will have attorney review the lease. Is there anything else we should do to negotiate the lease?

A: If you are a tenant, any proposed lease needs to be reviewed twice—once by legal counsel and a second time by an expert in business terms and market conditions, usually a broker. Why can't an attorney do it all? Let's review the purposes of both reviews.

An attorney is an expert in legal language, that is, making sure that time-tested legal language is accurately describing the will of the parties. The proposed lease will also contain clauses that were not even contemplated in your negotiation for the space, such as condemnation, quiet enjoyment, non-disturbance or holdover rent. Hopefully, you have hired an attorney who is well-versed in commercial real estate and familiar with best practices. He will be advising you on commonly accepted language as well as a reasonable estimate of your risk in any compromise.

Your attorney, however, is usually not familiar with market conditions and the business implications of various clauses. This is highly dependent on market conditions. As an example, in a very tight market where space is a premium, a tenant may have to agree to business terms that would never be considered in a weak market, such as stringent credit requirements.

A thorough business evaluation is a paragraph by paragraph review of the lease scrutinizing each of the business terms. This type of review is looking for concordance with the terms of the original negotiation, as well as fairness and balance in terms that may never have been discussed. Examples include "permitted use," sublet conditions and measurement of the space. A good review might even catch problems or issues with the space that were never contemplated. Several years ago, a lease review that we conducted for a client included the following:

Leased Premises: There are aviation rights about this project. We need to make sure that none of your highly sensitive or calibrated equipment is sensitive to excessive vibrations caused by low-flying aircraft. The landlord should supply you with the "McCarran International Airport Operating

Directives.”

I guarantee you that aviation rights are not going to make the checklist of most lease reviews! But a good, knowledgeable broker will have an awareness of local conditions and practices.

Who should conduct your lease review? If you have a tenant broker who represents your interests, this should be part of his job. If not, I highly recommend that you hire one, if only for the purpose of this business review. You should not have a landlord’s agent conduct the review. He has a fiduciary responsibility to protect the landlord’s interests and is not a neutral third party.

The best way to handle a lease review is a coordinated effort. Your attorney and your broker should act as a team, sending their comments to one another as well as you. With this team in place, you can sleep well knowing that all the bases are covered.

Do you have a question regarding commercial real estate? Email your question to Commercial Real Estate Q & A, at email@huntcorp.com for possible inclusion in a future column.

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