



DRAFTING THE FLEXIBLE LEASE

UT LAW CLE

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Introduction

As business changesthe commercial real estate industry has been required to adapted.

Fortunes have been made and lost based on the ability the owners of commercial real estate to adapt the use and development of real estate products to meet the changing needs of our business community

From main street, to the advent of regional malls, to the power centers and.... as we move forward into the world of e-commerce.....

From the Office warehouse, to the “campus lifestyle office buildings” ...to live – work environmentslike all businesses ..this is an ever changing process !

Which is good news for all of us!!

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Introduction

One systemic change over the past 30 years has been the transition of our economy to a serviced based economy.

With the advent of the service based economy, businesses have had to learn to both expand and contract, with great flexibility.

This need for flexibility affects both small and large businesses alike.

Some businesses must manage their growth and be prepared to downsize quickly;

Other larger businesses consider consolidation of divisions, relocations and reorganizations of departments, as well as the impact of sales or acquisitions of components of the business operation.



Introduction

Added to this is the effect the “technologies” are having on the manner in which we conduct or service businesses.

Not only has the increased role of technology modified the need for work spaces, but the demands of the new workforce born into the age of technology is also changing the nature and character of the work place.

Businesses are seeking options for flexibility!



Introduction

Candace and Kent covered some of these issues – including early termination rights and assignments and subleases.....we are going to drill down a bit further

This presentation will highlight the following:

1. Short lease terms for flexibility;
2. Options to renew or extend the term;
3. Expansion rights by rights of first refusal or rights of first offer; ;
4. Increased workspace efficiency; and
5. Relocations rights (if time permits)



Introduction

Each of the above flexibility rights granted to tenants are often viewed by landlords as a concession to the tenant. For this reason:

- ❖ It is not uncommon for the lease to provided that any options for “flexibility” (i) may only be exercised if the tenant is not in default of the lease at the time of the exercise, and (ii) the right may not be transferable to an assignee of the lease space.
- ❖ The landlord may require the tenant to reimburse costs and expenses related to the addition of this flexibility.
- ❖ There may be certain restrictions or limitations on the exercise of the rights such as the landlord’s prior consent.

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