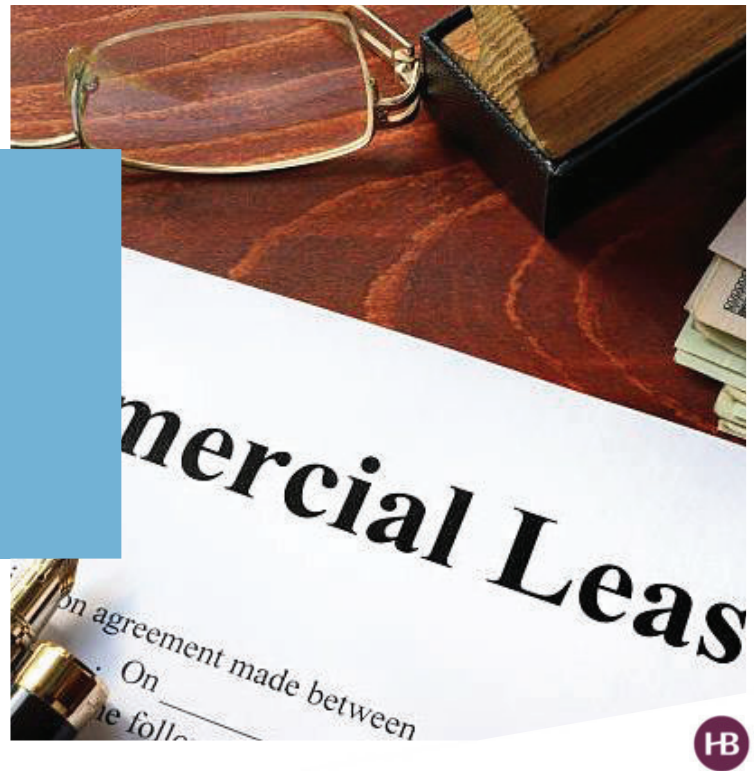


SIGNIFICANT ISSUES IN COMMERCIAL LEASES

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SIGNIFICANT ISSUES IN COMMERCIAL LEASES

Leases are documents which define the elements of a relationship between the Landlord and Tenant

- Dense agreements filled with covenants, procedures and definitions
- Landlord's and lenders tend to desire uniformity in their documentation
- Often the landlord provide the same lease for a large significant lease space to a tenant that may have a relatively small less material lease within a project
- This creates a dilemma for tenants of small spaces as the cost of the review of the lease is often disproportionate to the size of the lease transaction
- This phenomena also creates a dilemma for counsel when the client ask that you do a "general review" to look for the "big stuff" in a lease agreement.

SIGNIFICANT ISSUES IN COMMERCIAL LEASES

As legal counsel we

- Review documents to see the issues
- Review the issues with our clients and
- work together with our clients to obtain a lease agreement which they find acceptable.

So how do we meet these requirements while meeting client expectations for an efficient process, given the size of the transaction?

SIGNIFICANT ISSUES IN COMMERCIAL LEASES

“Just look at the big stuff”

Where the client states “just look at the big stuff” without more being discussed, this may cause a disconnect between the client and the lawyer. The legal counsel may make a judgment call and the client may feel differently.

Preparation:

- ✓ Make certain both client and counsel understand what is intended as a part of a “limited scope review”
- ✓ Have a good grasp of the client’s intended use.
- ✓ Ask the client to explain the transaction from their perspective. Often this may include feedback from the real estate broker who put the Landlord and Tenant together.

SIGNIFICANT ISSUES IN COMMERCIAL LEASES

Overview

Based upon the client's level of familiarity with the lease process sensitize a client to the various aspects of the lease including the importance of understanding:

- (i) The economics of the deal
- (ii) The Use of the premises
- (iii) The behavior required of the tenant during the term of the lease
- (iv) The allocation of risk
- (v) The rights and limitations on transferability and subleases
- (vi) The definition of default and remedies on default
- (vii) The end of term responsibilities of the Landlord and Tenant
- (viii) Any preferential rights granted to the Tenant

SIGNIFICANT ISSUES IN COMMERCIAL LEASES

Economics of the Deal

Have the client confirm the basic terms that make up the economics of the deal.

- Rent
- Percentage Rent (if applicable)
- Additional Rent (gross vs net lease)
 - ❖ Pass through operating expenses (Op Ex)
 - ❖ Utilities
 - ❖ Insurance
 - ❖ Taxes
 - ❖ Special costs
- Security deposits
- Term
 - ❖ Execution Date - Commencement Date and Rent Commencement Date
 - ❖ Sensitivity to delays on delivery

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Title search: Significant Issues in Commercial Leases

Also available as part of the eCourse

[2021 Bernard O. Dow Leasing Institute eConference](#)

First appeared as part of the conference materials for the
2021 Bernard O. Dow Leasing Institute session

"Big Issues in Leasing - A Review of Issues in Leases That are the "Must Review" Provisions
from the Tenant's Perspective"