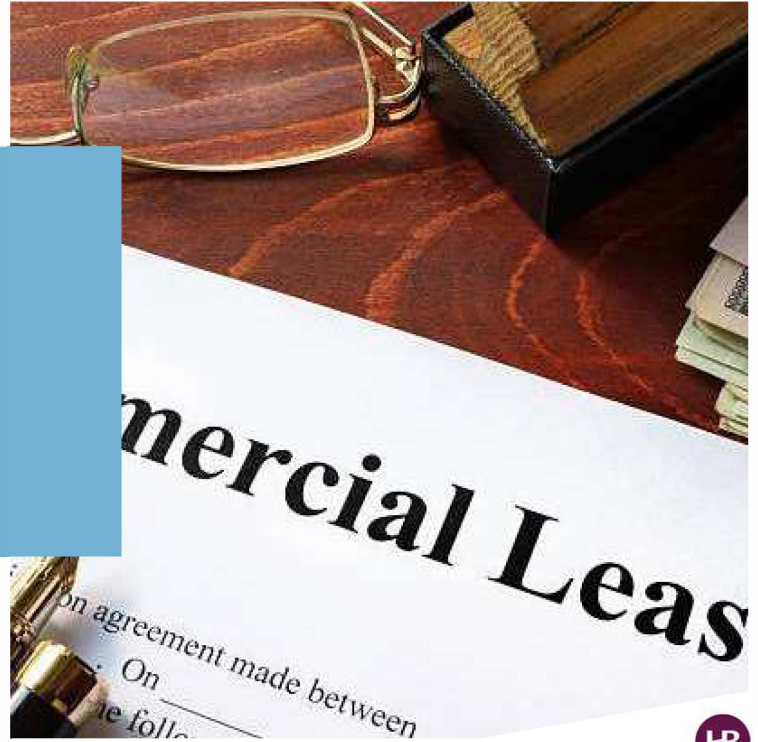


SIGNIFICANT ISSUES IN COMMERCIAL LEASES

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November 2023



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SIGNIFICANT ISSUES IN COMMERCIAL LEASES

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

They are dense agreements filled with covenants, procedures and definitions.

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.

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SIGNIFICANT ISSUES IN COMMERCIAL LEASES

“Just look at the important stuff”

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 Landlord and tenant during the term of the lease
- (iv) Work to be done by Landlord and Tenant
- (v) The allocation of risk
- (vi) The rights and limitations on transferability and subleases
- (vii) The definition of default and remedies on default
- (viii) The end of term responsibilities of the Landlord and Tenant
- (ix) 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 and escalators
- 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

SIGNIFICANT ISSUES IN COMMERCIAL LEASES

Economics of the Deal

Operating Expense Pass Through

One of the provisions of a lease in which we see the greatest amount of variance is the definition of operating expense pass throughs. Provisions can range from 3 sentences to 3 pages. Some gotchas to look out for....

- Common area definition and sharing ratio
- Deemed Rent pass through – management offices, health facilities conference facilities
- Cap x costs
- Limited on or no audit rights
- Mixed use allocations
- Casualty loss deductible pass through

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Title search: Significant Issues in Commercial Leasing

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First appeared as part of the conference materials for the
2023 Bernard O. Dow Leasing Institute session

"Big Issues In Leasing"