IN THIS ECONOMIC CLIMATE, WHY MAKE THE LEASING PROCESS TOUGHER THAN IT NEEDS TO BE?

A frustrated attorney for a tenant mired in drawn-out negotiations once lamented, "apparently, the only thing missing from this lease is a clause making sure we keep paying the rent after the end of the world!"

Sarcasm aside, this illustrates how most commercial lease forms - drafted, tweaked and stuffed with goodies over the years by well-meaning attorneys - are overbearing documents often leading to difficult, costly and time-consuming negotiations. Whether dealing with an office building or a retail center, is it all really necessary?

Addressing your tenants' concerns in a troubled economic climate is challenging enough; burdening them with outdated and arduous leases won't make it any easier.

That's not to say you should strip your leases down to bare bones -- effective risk management should always be maintained. But when you turn the drafting process over to most lawyers, effective risk management typically turns into maximum risk avoidance.

Maybe it's time your lease underwent a good "pruning".

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Not only will a well-trimmed lease reduce hotspots and unnecessary delays, it may stop your tenants from pining away for greener, more "user-friendly" pastures. As long as your attorney explains the risks, you can make the business decision to be more flexible and proactive.

What are some of the more unnecessary clauses that raise red flags and lead to needless slow-downs and show-downs? Let's start with the infamous "Express Negligence" clause. Under Texas law, any "extraordinary" shifting of the risk must be set forth in a

conspicuous manner (i.e., bold or capitalized letters). If a landlord wants to be indemnified by its tenants against the landlord's own negligence, the provision must clearly stand out. While there are good reasons to adopt this position, most tenants find this kind of risk-shifting offensive, resulting in significant and often heated arguments. Lawyers are obliged to recommend such language, but you are entitled to determine whether it's the best business decision.

Another trouble spot arises in the aftermath of a fire or casualty. Landlords understandably prefer to hold all the cards in such situations, but insisting on total control puts tenants in an untenable position. Some basic protections can help reduce the friction. After all, if a casualty actually occurs, most reputable landlords will help their tenants survive the incident, because they recognize the long-term value of tenant retention and loyalty. You don't have to give away the farm to put your tenants at greater ease in the original lease.

There are several other contentious provisions that typically cause chronic problems in negotiations, such as service interruptions, indemnity and condemnation, to name a few. While you cannot (and should not) eliminate all grounds for debate in a lease, many of these hurdles can be lowered to save time and money and, in some cases, help close deals. Leases that seem fair and reasonable from the start will reduce tensions, negotiation time and headaches, while kicking off the new business relationship on a good note. And word will get around...

To get there, however, you will need an attorney with the right combination of legal smarts, field experience and business savvy to conduct a thorough evaluation of your lease forms and process. Start by asking your leasing agents and property managers which clauses are causing the most problems. Are any provisions duplicative, confusing or simply unnecessary? If leases are your "widgets," invest in your manufacturing process to improve your productivity.

After such an effort, your deals should proceed more efficiently. Soon, you can turn more routine work over to lower-tier professionals, thus leaving your attorney to focus on "one-off" provisions.

Landlords can also streamline negotiations by creating a "blue book" of standard fallback concessions. Arming your agents with the tools to make consistent, front-line concessions empowers them to make deals while streamlining the process. More meaningful concessions would require sign-off from senior officers and concessions with legal consequences would need legal approval. The more modular the better.

The leasing process doesn't have to be a knock-down drag-out. Engage a practical business-minded attorney to purge your lease of unnecessary verbiage and create a consistent policy on tenant concessions. Moreover, talk to your brokers and managers - your eyes and ears on the ground. Their input can be invaluable in re-shaping and re-vitalizing your leasing program.

In these uncertain economic times, landlords who facilitate the leasing process will come out ahead in the end. Take an objective look at your system and ask yourself the tough question: Are we as fair, efficient and expeditious as we could be?

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