

REAL ESTATE COUNSELORS, PLLC



CORPORATE COUNSEL SOLUTIONS

The Right Team for the Job - Reasons to Hire

Outside Counsel to Negotiate Your Lease

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Introduction. Commercial leases have many sections protecting a landlord from a variety of situations. These leases were also improved over time to cover issues that the landlord faced during its years of ownership. In addition to arming themselves with sophisticated, one-sided documents, most landlords use experienced real estate counsel that negotiate leases on a daily basis. This is the background that companies face when negotiating their lease.

Many companies do not have an experienced real estate lawyer on staff, unless real estate transactions are part of the company's core business. The result is that lawyers with tax, labor or corporate backgrounds are tasked with negotiating the company's leases. This exposes the company to undue risk and leaves the landlord at an unfair advantage. The benefits of engaging a lawyer with significant commercial real estate experience to negotiate a company's leases greatly outweigh the cost of the engagement. Here are a few reasons why this is true.

Your Lease Obligations. For many companies, the cost to rent office space will be one of its most expensive obligations. First, there is the initial investment of designing and building-out the office space and furnishing it. Then there is the obligation to pay base rent for the initial lease term. In addition to base rent, there are also charges for utilities, real estate taxes, operating expenses and other costs. All of these charges typically escalate every year of the lease term. Additionally, the company must carry insurance and will incur some costs in repairing and refitting its premises at term end. A company's failure to satisfy any of these obligations will be a default under its lease, exposing the company to liability. Even if a default is cured, the lease may provide that past defaults prevent a company from renewing or expanding its leased site.

BOTTOM LINE - *Considering all the costs the company will face and the consequences of lease defaults, the company should use counsel that is well experienced with customary negotiating points and strategies to reduce risks.*

A Landlord's Lease. Every lawyer appreciates the advantage of preparing the first draft of a contract. Most companies, however, won't have the opportunity to do this with their lease, only to review and negotiate the form a landlord gives them. As mentioned above, the company is at an immediate disadvantage, while the landlord's lawyer will have the "home court advantage."

BOTTOM LINE - *An experienced real estate lawyer has reviewed many different leases and can quickly determine if the form given to the company is reasonable or overreaching.*

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Rules of the Game. Every experienced lawyer can spot many potential areas of liability, or one-sided language. Merely deleting objectionable clauses, or making every unilateral provision a mutual one, will not work, however. As in many other areas of business, there are some risks that are customarily borne only by a tenant, while others can be equally shared by both parties.

BOTTOM LINE - *A commercial real estate attorney will save a company money, and speed their lease negotiations, by knowing what to ask for, and how to ask for it.*

Real Estate Terms. Several concepts in leases are unique to real estate transactions such as “subordination, non-disturbance and attornment”, “waiver of subrogation” and the “rule against perpetuities.” Recently leases have also included Patriot Act provisions, greater environmental obligations and even language dealing with toxic mold and “sick building syndrome.” Leases for LEED and green buildings have resulted in added tenant-obligations regarding power usage.

BOTTOM LINE - *An experienced real estate attorney can clearly explain these provisions to the company’s General Counsel and officers and make sure such provisions are not overreaching.*

Easy to Delegate. Unlike many other complex legal matters that arise which involve multiple disciplines such as tax, labor, etc., real estate matters are often self-contained and are therefore very easy to delegate to outside counsel. Once brought on, your outside counsel will be able to quickly take the lead, while keeping you in the loop as the transaction progresses.

BOTTOM LINE - *A company can easily delegate office lease work to outside counsel and continue to focus on its core business.*

Future Events. One of the most important and demanding responsibilities of a General Counsel is to protect the company from legal liability that may occur in the future. The typical minimum lease term is 5 years, during which many different events may occur that impact the company and its lease obligations. The company may decide to downsize, and then need to reduce some office space, or growth may result in the need additional space for expansion. Years in the future, the company may be acquired by another party, which very often triggers the assignment provision of the lease. **BOTTOM LINE** - *An experienced real estate attorney can make sure the company’s lease provides the flexibility to deal with unanticipated future events.*

Negotiating Time. The average length of an office lease in the DC area is 60 pages, more counting exhibits and attachments. Someone who is not experienced in reading leases would take double the time to perform a detailed review of the lease, exhibits and attachments and mark them for negotiation. Also, landlords exert pressure on tenants to respond quickly or risk losing favorable business terms. **BOTTOM LINE** - *An experienced real estate attorney is accustomed to the process, can quickly turn around drafts and efficiently negotiate key points.*

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CONCLUSION: The issues that arise in negotiating leases are unique, complex, and often interrelated and the financial and non-financial obligations assumed by a company in a lease are significant. The General Counsel's job to protect the company against risk. *Delegating the matter to an experienced real estate attorney is a cost-effective solution that mitigates risks, saves time and keeps the company focused on company business.*



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Real Estate Counselors is a boutique law firm specializing in commercial real estate and business transactions.

Carla Calobrisi has practiced real estate law for over twenty five years, spending the last twelve years as Associate General Counsel at Booz Allen Hamilton Inc. Ms. Calobrisi has negotiated leases for over one million square feet of space. Ms. Calobrisi is a member of Real Estate Counselors, PLLC, a boutique law firm, focusing in commercial real estate and business transactions, with offices in DC, Maryland, Virginia and New York.