

## **Ask the Lawyer: Don't Approach Commercial Lease too Lightly**

### **Question:**

I want to relocate my retail business to a shopping plaza that attracts more traffic than the one where I am currently located. I've been at the same location for years, so what should I know now about shopping for a commercial lease?

### **Answer:**

Due to a glut in vacant commercial space in the Capital Region, many commercial landlords are eager to sign on new tenants. Right now, businesses have the advantage when it comes to negotiating the terms of commercial leases, but it is hard to say how long this renter's market will prevail.

In late February, the National Association of Realtors said the nation's retail vacancy rate is expected to drop to 10.9 percent in 2013, compared to 11.5 percent this year and 12.5 percent in 2011. Remember, the lower this vacancy rate drops, the less bargaining power tenants will be able to command when negotiating with commercial landlord.

Be careful about approaching your commercial lease too lightly. Your business's profitability could hinge on this contract. Usually, commercial tenants enter into triple net leases. These leases cover basic rent payments and include a trio of additional expenses: taxes, insurance and maintenance. While you can expect the base rent to remain consistent with the terms of the lease, these additional expenses can fluctuate greatly. Landlords often raise the pro-rated amount tenants owe for taxes, insurance and maintenance in annual reassessments.

Make sure your lease includes provisions requiring the landlord to give you at least 30 days prior notice of any reassessments and that you have the right to contest them. Usually, if the tenant and landlord cannot agree on the terms of a reassessment, the lease requires them to take the dispute to arbitration or to court.

While commercial real estate vacancy rates remain elevated, you might want to negotiate a longer term for your lease, perhaps up to five years, if you are getting the space at a bargain. You may also want to include in the lease renewable options, such as multiple options to renew for additional rental periods, even for three years at a time.

Lastly, take advantage of the fact that there are many landlords out there eager to fill vacant space. See if the landlord is willing to incur the fit-out costs for preparing the space for your business. Also try to include in the contract an exclusivity clause that prohibits the landlord from leasing any other space at the plaza to retail competitors.

Business owners shopping for new leases or needing to renew existing ones should consult with a commercial real estate attorney who could help them take advantage of the renter's market. A lawyer could negotiate favorable terms for the tenant and write them into the lease.

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