



Commercial Real Estate Hot Topic

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To Renew or Not Renew: Why it is Vital to Know What Your Lease Requires

By Steven M. Williams, Esquire

Lease renewal provisions are an extremely important part of the lease document and should be studied carefully. Although Mr. Williams has authored the short article below emphasizing the importance of clearly understanding the "notice date," there is much more involved. I would encourage you to talk with your attorney or call/e-mail Mr. Williams directly regarding any questions you may have from this article. Is there a right of first refusal? If the renewal is not exercised, do you lose your first right? Is "holding over" addressed in the lease? If so, at what rate, and is notice required? All of these issues can have financial impacts for you as a tenant. I cannot emphasize enough the number of times I have seen an unpleasant event occur when a tenant did not pay attention to this part of the lease document. —William Gladstone, CCIM, SIOR

Begun just five years earlier, ABC Corporation's business was booming and the future looked overwhelmingly bright. It was truly a success story. Until, that is, on March 1st when ABC received a notice from its landlord that it must vacate its rental space by April 30th, the end of the term of the lease. The notice must be wrong, ABC insisted, because it had a five-year renewal option in its lease.

While ABC was correct that its lease contained a renewal option, it had failed to properly exercise the option. As a consequence, ABC's lease expired. Not only did ABC incur moving expenses, but it was forced to pay a higher rent in its new space than it would have paid had it renewed its lease. Ultimately, ABC did not recover from the financial hardship that ensued. Unfortunately, tenants often find themselves in ABC's shoes.

Renewal provisions in commercial leases come in all shapes and sizes. Some provide that the renewal is automatic unless the tenant notifies the landlord that it does not wish to renew. In others, the renewal occurs only if the tenant notifies its landlord that it intends to renew.

The Renewal paragraph in ABC's lease stated:

"So long as Tenant is not in material default of any term of this Lease, Tenant shall have one (1) five-year option to renew. If Tenant desires to exercise the renewal option, it must give Landlord written notice no later than ninety days before the end of the Term."

But, ABC did this – or so it thought. On February 1st, three months before the end of the term of the lease, ABC sent a letter to its landlord stating that it was exercising the renewal option. However, ABC's notice was defective for several reasons.

First, ABC's February 1st letter did not constitute ninety days' notice. Rather, it was only 89 days. Second, ABC mailed its letter, but the "Notices" paragraph in ABC's lease required that all notices to the landlord be hand delivered. Third, ABC did not deliver its letter to the landlord's lender, another requirement of the "Notices" paragraph. Any one of these reasons was sufficient for ABC's landlord to require that ABC vacate by April 30th.

It is vitally important that tenants be fully aware of, and understand, the renewal process in their particular lease. In addition, as ABC learned the hard way, it is important that tenants understand how other lease provisions (in ABC's case, the "Notices" provision) may impact upon the renewal process or prescribe how it is to be handled. The inadvertent failure to exercise a renewal option can be financially devastating to a business. In ABC's case, it was fatal. In the case of an automatic renewal provision (where the lease is automatically renewed unless the tenant provides notice that it does not wish to renew), an inadvertent exercise of the option can be equally destructive. In such a case, a tenant who believed that he had the right to vacate his rental space may nevertheless find himself legally obligated to pay his former landlord rent for the renewal term, even though he is not enjoying the use of the rental space.

About the Author

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