

A “DOG” OF A LEASE CAN BITE

Boilerplate clauses in leases may be problematic for tenants in certain situations and can eat away at a tenant’s bottom line. When reviewing a lease agreement, a tenant should watch out for language that gives the tenant potential future responsibilities which could lead to additional expense at a later date.

Most commercial leases have a section dealing with what happens if the premises is damaged or destroyed. Typically, the landlord will be required to either terminate the lease or re-build the damaged premises. However, leases are often open-ended with respect to the deadlines a landlord has to make such decisions. It is important for a tenant to negotiate a deadline for (1) making the decision of whether to terminate the lease or re-build (30 days from the date of the occurrence is reasonable) and (2) both beginning and completing the restoration of the premises. Moreover, the outside date for completing the repairs should not be subject to any “force majeure” or “force of nature” clause contained within the lease: the landlord must be obligated to restore the premises regardless of how the premises became damaged. Without time restrictions built into the lease, a landlord can potentially avoid restoration of the premises without violating the lease.

Many commercial leases also require the tenant to assume some or all of the maintenance requirements with respect to the non-structural portions of the premises. A tenant should make sure that the landlord gives a representation and warranty in the lease that the items the tenant is expected to maintain are in good condition at the commencement of the lease term. Otherwise, the tenant may inherit a laundry list of chronic maintenance problems.

Finally, tenants under a commercial lease are typically required to represent that the tenant will, for example, “comply with all laws, ordinances and regulation relating to or affecting the premises.” Immediately upon reading this language, the Americans with Disabilities Act (“ADA”) should come to mind. The ADA contains many specific guidelines on how a building is to be constructed in order to provide wheelchair access and access to others with disabilities. Forced compliance with such laws can be economically burdensome. Thus, the tenant should request a warranty from the landlord that, as of the commencement of the lease term, the premises comply with “all laws, ordinances or regulations.” This will return responsibility to the landlord for any violations which pre-existed the lease.

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