

## **NUTS AND BOLTS NEWSLETTER FOR BUSY PRACTITIONERS**



**914-644-6100**



### ***REPRESENTING TENANTS ON SMALL SPACE OFFICE LEASES***

Representing a tenant for small space in a large multi-tenant office building requires considerable balance. You can be torn between aggressively representing your client and trying not to over-lawyer and mess up the deal. It is important to focus on what is most important to small office tenants and avoid the temptation to show how much you know about office leasing.

#### **Create Flexibility to Get Out:**

Landlords will often look for personal guaranties and large security deposits from small office tenants. If you couple this with the inability to assign or sublease the space, your client could end up painted into a corner if they ever need to move or terminate the lease. You should try to create as much flexibility as you can for your client to assign or sublease some or all of the space, or try to see if the landlord will eliminate the requirement of a personal guaranty and allow your client to rent the space as a single purpose entity such as an LLC. Make sure to also broaden the "use" definition to allow a larger universe of potential assignees or sub-lessees.

#### **Good Guy Guaranty:**

If the foregoing negotiation does not go well, perhaps the Landlord will consider a "Good Guy Guaranty." This is a device whereby the tenant guarantees payment of the rent, but it is limited to rent for the possession period only and if the tenant gives the landlord certain notice and vacates as and when he says he will vacate leaving the premises in good shape, the Landlord will not look to the tenant for any subsequent rent after the surrender date. (See: Attached Form).

#### **Hours of Operation:**

Will Landlord be supplying heat and air-conditioning? During what hours? If the Tenant expects to use the space frequently after normal business hours, the Tenant needs to understand whether overtime HVAC is available in the building, and the cost of overtime HVAC.

#### **Real Estate Taxes and Operating Expenses:**

A small tenant will have very little leverage to negotiate the terms and definition of operating expenses. One approach is to ask the landlord to provide the tenant with the same

## NUTS AND BOLTS NEWSLETTER FOR BUSY PRACTITIONERS



**914-644-6100**

definition of operating expenses as is contained in one of the larger existing space leases in the same building. Another problem is where a base tax year is established for a small tenant before the building is at full occupancy. This could cause substantial increases in your client's proportionate share of real estate taxes that are not due to mere increases in the tax rates of local taxing jurisdictions. An approach to this problem is to try and cap the tenant's annual operating expense and proportionate share of real estate taxes to a specific percentage over the prior year. While not a perfect solution, at least the small tenants will have some idea of this cost for future years.

### **Casualty:**

Small tenants should have the right to terminate if the premises aren't restored after some period of time.

### **Remember:**

- ▶ Get off on the right foot, be courteous and professional with the broker and landlord's counsel.
- ▶ Discuss early on what issues are truly deal killers (for example, an overbroad personal guarantee).
- ▶ On "deal killing" issues, don't waffle. Be polite but very clear that the lease won't get signed if the issue isn't

resolved satisfactorily. Guarantees are high up on the list.

- ▶ On the very important issues, be persistent.
- ▶ Do not over-lawyer the lease, but explain the risks to your clients.

We're attaching for your use the following forms:

### **Tenant's Rider to Office Space Lease for Small Tenant.**

### **Good Guy Guarantee.**

All of these forms are in the Word format and will soon be added to our website along with many other useful leasing and commercial real estate transaction forms.