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THE BAUER REPORT



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Relocating An Existing Tenant

A landlord's standard lease usually contains a clause requiring a tenant to move to another space in a commercial building or shopping center. A new tenant that is negotiating for space in the building might be surprised to see the clause before signing the lease, wondering about the reasons for it.

The owner or manager will seldom require any tenant to move to another space because it can be expensive for both the owner and the tenant. The clause must be in the lease, however, as the owner has to be able to manage space efficiently.

This clause can require the tenant to move to other space in a building (or even to another adjacent one) on appropriate notice from the landlord at any time during the lease term. The usual reason to relocate a tenant is to consolidate scattered vacant space in a building to provide a large block of space for a single incoming tenant.

If the commercial building is a shopping center, a first class tenant (in the sense of its ability to generate shopping traffic) might choose a certain location. The landlord might relocate existing tenants because that relocation will benefit every tenant in the center.

Objection To Relocation

The objections by a tenant can be

obvious. The proposed new space is not as desirable. Goodwill might be lost by the tenant. The move will cause confusion within the business. A retail business can lose sales during the move. However, only the largest and strongest tenants will be able to eliminate the clause in the lease. These are the tenants least likely to be relocated anyway.

For the smaller tenant, the goal should be to ensure that the clause, if exercised, can not be done arbitrarily or at any cost to the tenant.

Conditions In The Lease

Here are some conditions that would normally be in the relocation provision:

- **Advance notice.** A tenant should get notice of the relocation with a right to access the new space in plenty of time before the moving date to get the new location ready for his occupancy.
- **Reason for the move.** The relocation should be for a definite cause and only in cases specified in the lease. **Example:** The incoming tenant that will be using the tenant's old space will occupy a certain percentage of the property

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This publication is not a solicitation but is an information service from this office.

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When ideas in tax and other legal areas in this publication seem to fit your situation, it is recommended that you discuss them with your professional advisor before taking action.

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or a certain square footage. In this negotiation, the landlord may object to specific statements as this could limit his options.

- **The new location.** The proposed new location should be specified, when possible. **Example:** Same building or another specified building, specific floors. The square footage should be the same with minor variation and the space should be comparable in location, improvements and amenities.
- **Rent adjustment.** The landlord will want the tenant to pay the same rent per square foot. The tenant may argue that the rent should be based

on square footage only with lesser rent for a smaller space.

- **Moving costs.** The landlord should agree to pay for all costs of the move, including moving expenses, painting and remodeling, so the space is comparable to the original space.
- **Frequency of relocation.** Only one relocation should be allowed in one lease term. In a long lease, no more than once in a specified number of years. If the relocation occurs in a specified number of months before the expiration of the lease, either or both of the parties can have the option to terminate the lease. If the landlord terminates, he may agree to pay the tenant a specified cash payment. □

Investing In Industrial Properties

If you haven't considered industrial properties as an investment vehicle, it may be time to take a look. Warehouse and distribution (W&D) properties are of interest because their standard layout suits a wide range of users, in contrast to specialized manufacturing facilities. Industrial properties look good for the following reasons:

- The market for industrial property is doing well with vacancy rates nationwide below those of other commercial buildings.
- There is a shift in the location and nature of demand, caused by changing technology and trade patterns, that will present investment opportunities.
- Institutional investors who have portfolios that are light in industrial assets are acquiring warehouse and distribution properties for diversification.

With any kind of investment, of course, there are always risks. The most significant is the potential for rapid functional or geographic obsolescence. Because of this, investors must carefully analyze factors such as location, construction, ceiling height, and the number and location of docks, as well as other factors.

The Healthy Property

The turndown in real estate did not affect industrial property as much as other properties because this property did not encourage speculative building; as much as 30% of the cost of W&D properties is in nondepreciable land, so they held limited appeal for tax-motivated investors. Foreign investors have largely avoided the warehouse and distribution sector because it lacks the "trophy quality" that makes offices, hotels, and resorts attractive. As a

result, warehouse development was driven more by demand than by capital seeking an outlet. Also the size of the properties discouraged many institutional investors who prefer to invest in larger properties than the typical \$1 million to \$10 million W&D property.

Choosing The Investment

Choosing the right property may be a little more difficult. Certain factors may be driving the warehouse and distribution market toward greater efficiency, changing how and where business will be done:

- **Inventory control systems.** Computerization and techniques such as bar coding can insure faster and more reliable deliveries from shipper to destination. Combined with just-in-time systems, it reduces inventory and space requirements.
- **Automated space.** Using robots in W&D facilities will grow over time, encouraging more efficient use of space.
- **Regulations.** With the trend toward deregulation during the past decades, there has been a reduction in delivery costs by trucks and planes, causing a shift away from rail and water. This widens the possible locations for warehouse and distribution facilities and encourages the construction of fewer and larger facilities. Since trucks and planes speed deliveries, the amount of inventory stored and the space needed can be reduced.

Investment in warehouse and distribution facilities must be very carefully thought out because of the conflicting needs for greater demand for space while using existing space more efficiently. □

Changes In The Workplace

Working from home is now becoming a trend. The growing popularity is remaking how we work, the tools we use for that work, how we communicate at work, and even the hours we work.

A major benefit to the employer is being able to downsize on square footage of space for the company. A major benefit to the worker is that they can buy a home or condominium outside of the business area in a suburb or at an ocean resort with the great locations that they desire and not have to think about what the daily commute will be.

Employees who work from home have changed some sectors of commercial real estate, both in terms of how spaces are designed, how many square feet the company needs for workers and where the company is located.

Many companies have downsized their office space to save money by allowing or even encouraging employees to work from home. What was born from necessity during the last recession has turned out to have greater benefits than lower rent on the commercial office.

It has been reported that employees that work from home are just as, if not more productive, with less distractions, have their output increased and seem more satisfied in general.

If the same employees were in the office, there are coffee breaks, socializing and interruptions through out the day, that is not happening at the home office. The employee can work in any kind of clothes that they desire, no longer have to spend money on lunches, gasoline, parking and the day to day expenses that occur when commuting to an office.

This type of work has also been a boon for parents who need more flexibility in their schedule to accommodate child care, school events and sick kids. Sometimes it can be a problem to work at home with small children. But these are small problems that can be solved by balancing work and personal lives.

It has been reported that in recruiting the best talent, employers find that the work at home concept is a major perk.

Remote work does have its share of problems. Some people dislike working in the same place where they live and relax, and it can be difficult to create and maintain a company environment without co-workers being in the same room. But the concept of not commuting on a crowded bus or slow and go in early morning traffic is a major benefit.

Above all, buying a home in a more desirable location is a great plus for the employee and being able to downsize on square footage is a major plus for the company. □

Building Standards For Tenant Improvements

A building owner wants to be sure that improvements made by or for a tenant be of equal quality to the building itself. That's because tenant improvements, upon completion, become a permanent part of the building. The goal is to establish building standards that will permit a suite of office space to be fully developed to a tenant's specifications with no extras involved, while also ensuring that the improvements are of satisfactory quality, commensurate with the improvements in other tenants' space and with the building itself.

A copy of the building standards should be included with the lease and will identify the specific materials that are to be used for such components as doors, partitions, and fixtures. And the standards will also specify the type of carpeting, floor covering, or wall finishes that the landlord will provide or allow.

Throughout the entire office building, for example, the ceilings, doors, hardware, light fixtures, area floor coverings should be standard and not subject to tenant choice.

Window coverings are almost always standard so that a uniform appearance is achieved both from the exterior of the building as well as in the interior office areas. Draperies or window blinds (horizontal and vertical) are the predominant choice, and tenants are cautioned not to change them.

What Variations Are Allowed

Wall finishes are very important to most office tenants. Many such tenants may desire reception area and key executive offices be covered with a wall fabric, wallpaper or paneling rather than paint. The building standards should allow this variation, provided that the wall is reconverted to a paintable surface at the end of that tenant's lease term.

Within each tenant's space, however, moveable or fixed partitions or carpeting of a particular color may be allowed to personalize the office and to accommodate the tenant's preference.

Electrical and Communications Requirements

The electrical and telecommunications standards are a major concern of today's office building managers. These standards quickly become obsolete by technological advances. So, for example, the number of electrical and telephone outlets per square foot of occupied space must increase to meet the new needs of tenants in the "information age". A modern office building now must provide capability for computers and internet, fax machines, copy machines, video teleconferencing, electronic mail, interoffice and traditional telephone service, energy management and security. □

Profits Found In Conserving Energy

Any savings in expenses that have already been budgeted can be turned into spendable income. One expense that can be controlled to some degree is the energy used for lighting, electronics and air conditioning.

Lighting

Lighting the office space uses a high percentage of electrical energy. In addition, the lighting can generate excess heat that needs to be cooled by an air conditioning system. Up to 60% of the electricity used in a building can be used by lighting and cooling. Bills for lighting the building can amount to about half of the original cost of the building during its lifetime.

Reduce your lighting. A general rule is that a light should be off when no one is present. Turn off lights in unoccupied areas, remove excess lighting and other lights not necessary for security and safety.

Here are a few more ideas:

- Improved bulbs and fluorescent tubes.
- Improved lighting controls, reflectors and spacing of the light fixtures.
- Micro electric sensors that measure sunlight and sense people entering and leaving rooms can cut the use of lighting drastically.
- Individuals in offices can cut usage comfortably by

using desk lamps (with special low-usage fluorescent bulbs, halogen or LED) instead of overhead lights.

Office Equipment

Be energy smart with office equipment. Turn off office equipment or set it to “power down” when not in use. Setting computers, monitors, and copiers to use sleep-mode when not in use helps cut energy costs by approximately 40%. Remember to turn equipment off at the end of the workday. Use “smart” power strips. These sense the presence or absence of office workers and turn the attached equipment on or off accordingly.

Heating and Air Conditioning

Keeping a building cool in warmer weather can save enormously on energy. Consider the savings that can be utilized from the installation of an energy management and control system (EMCS). The EMCS automatically controls the ventilation, heating and air conditioning systems in a building. EMCS can be as simple as individual point-of-use timers to very sophisticated microprocessor-based systems controlling the whole building.

Use shades and blinds on windows. On hot days, draw the curtains and/or shades to keep the sun out. Remember to close doors to the outside to keep in cooler air.

Technology in energy, whether in lighting, electronics or air conditioning is always improving. □

Your Real Estate Investment

Knowing what you can do in some investment situations can be the difference between an annual profit or loss in your currently owned commercial property or the one you intend to acquire. How you acquire it can be important.

The professional commercial real estate broker is in the position to represent a client in real estate transactions by setting up sales, exchanges, leases, purchase and sales of options, and management of real estate. This real estate practitioner stays aware of current tax laws and court decisions in order to structure transactions, but does not give legal or tax advice (unless he/she is also an attorney or a certified public accountant). In any complex

transaction that might result in changes in any owner’s legal or tax situation, the other members of the “consulting team” should be the owner’s attorney and/or tax advisor. We always recommend consulting with these professionals during the planning and closing of major real estate transactions. All can affect taxes and estate planning.

Let’s get together to evaluate your present portfolio of properties, or review your plans for future acquisition.

Starting with your present position and your goals for the future, we can set out moving directly toward achieving those goals. □



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