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Remember: Engage an Attorney to Review Your Lease!

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FRIEDMAN STROFFE & GERARD, P.C.

This is the time of year when retailers and other business owners look carefully at their expansion plans for the upcoming year, begin scouting potential new locations, and perhaps even begin substantive lease negotiations with landlords concerning expansion, contraction, relocation and additional premises.

Surprisingly, many will not engage the services of a qualified attorney to assist with their substantive lease review, thus potentially exposing themselves to a host of possible financial and legal headaches down the road.

Why is an attorney needed?

In addition to the basic financial terms of a lease (base rent, percentage rent, CAM, taxes, radius restrictions, tenant improvement allowances, etc.), there are dozens of other provisions contained in a lease that many small to mid-size retailers (and other tenants) do not think to even consider, let alone negotiate. You should pay careful attention to the construction and delivery provisions contained in your lease—you may be on the hook for certain items you thought the landlord was providing. This is often the case with older centers or buildings that need ADA retro-fitting or other code compliance improvements.

Even in brand new centers, there are often hidden expenses not discussed at the deal stage that can wind up in the lease—items such as advertising/marketing fees, association dues, and unusual CAM expenses that might go missed in the lease by the untrained eye.

Many tenants only cursorily review a lease presented to them by a landlord, or worse yet, abdicate the substantive lease negotiations to their broker. A broker CANNOT provide you legal advice, and most likely will negotiate the financial and other major business terms of the lease only, leaving you on your own for other equally important items like construction, insurance, co-tenancy requirements, assignment and subletting rights, termination rights, indemnity, and many other things you may not have realized were even in there!

Even with the most reputable brokers, there is a built-in conflict of interest, because they only get paid if the deal is signed. So, an independent review by a qualified attorney can save you from a legal/financial headache from which your broker can move on, but you can't.

Remember, everything is negotiable! Just because a provision was contained in a prior lease with a prior tenant does not make it appropriate to your situation. A lease is a long-term commitment by both parties, therefore make sure to review and analyze it carefully keeping in mind how each provision may affect your day to day business, both now and in the future.

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