

Allen Matkins

American Corporate Counsel (ACC)

Trends in Commercial Real Estate

Speakers:

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Trends in Commercial Real Estate:

Tips on How to Best Negotiate, Renew, or Protect Your Lease

Terms

by Seth A. Garrett, Esq.

Overview

- COVID-19 Has Disrupted All Businesses
- Rent Relief / Extended Lease Terms
- Eviction Moratoria
- Work From Home Policies
- Lender Implications

Legal Rights of Tenants

- Force Majeure
- Access to Premises
- Interruption of Essential Services
- Governmental Action

Tenant Approaches

- Rent Forgiveness
- Rent Deferral
- Month-For-Month Extension
- Blend & Extend
- Early Full Extension
- Security Deposit Burn Down

Preliminary Considerations

- Accounting
 - Refurbishment
 - Right Size
 - Credit Enhancement
 - Timing
- Leverage
 - Who Is Tenant?
 - Who Is Landlord?
 - What's the Market?
 - Underlying Lease Language
 - Is There a Lender?

Landlord Asks and Tenant Guidance

- Financial and Other Information
- Confirmation From Tenant's Insurer
- Documentation for Government Assistance
- Financial Statements
- Do Not Withhold Rent
- Do Not Ask for Help if It Is Not Actually Needed

Force Majeure Provisions

- Pandemic and Epidemics Defined
- No Excuse for Non-Payment of Rent
- Actual Delays; Remedies [see **Preliminary Considerations**]
 - Pre-Rent Commencement Date
 - Post-Rent Commencement Date

Trends in Commercial Real Estate:

Tenant Improvement Challenges and How to Overcome Them

by Megan I. Thiels, Esq.

Work Letters and Tenant Improvements

- Delays in Construction
- Material Unavailability
- Contracts with General Contractors
- Trends in Tenant Improvements

Delays in Construction

- COVID
 - Government Mandates
 - Outbreaks
- Unavailability of Contractor or Labor
 - Contractors specified in Work Letter
- Delay impacts on:
 - Construction Schedule
 - Lease Commencement Date
 - Rent Commencement Date

Material Unavailability

- COVID Impacts on Material Availability
- Tenant Delay
- Substitution of Materials
- Increased Costs – Who Bears the Burden?

Contracts with General Contractors

- Aligning the Delay Concepts in the Construction Contract with the Work Letter
- Locking in Prices for Materials and Labor
- Liquidated Damages

Trends in Tenant Improvements: **Office Leases**

- Less Open Concept Plans
- More Individual Offices
- Space for Social Distancing

Trends in Tenant Improvements: Retail/Restaurants

- Retail Generally
 - Smaller Inventory, Larger Online Presence
 - Pick Up Windows/Designated Areas for Customers to Pick Up Orders
- Restaurants
 - Outdoor Dining
 - Less Emphasis on Dining Rooms for Fast Food
 - Example: Taco Bell Defy Restaurant Concept



Trends in Commercial Real Estate: Everyone Is Back From Quarantine With Their Dogs and ADA Attorneys

by Michael J. Holmes, Esq.

Service Animals

- A service animal is individually trained to do work or perform tasks for a person with a disability.
 - Only dogs (and sometime miniature horses)
 - No license, vest or other documentation required
 - Limited inquiry

Service Animals

- Service animals vs. emotional support animals
 - Landlord's obligations
 - Different standards for employers, airlines and housing
 - Resolution of tension between tenant employer and landlord

ADA Disclosure Statute

- Civil Code § 1938
 - Disclosures are made in lease documents
 - Public accommodations
 - Any inspection report prepared by a CASp

Required Disclosures

1. Civil Code § 1938(a): "A commercial property owner or lessor shall state on ***every lease form or rental agreement*** executed on or after January 1, 2017, whether or not the subject ***premises*** have undergone ***inspection by a Certified Access Specialist (CASp)***."

Required Disclosures

2. Civil Code § 1938(b): "If the subject premises have undergone inspection by a CASp and . . . there have been no . . . **alterations** . . . the commercial property owner . . . shall provide . . . a copy of **any report prepared by the CASp**"

Required Disclosures

3. Civil Code § 1938(c): “The prospective . . . tenant shall have the opportunity to review *any CASp report* prior to execution of the lease . . .
..”

Required Disclosures

4. Civil Code § 1938(d): If the CASp report “meets applicable standards,” then owner must provide a copy of the current disability access inspection certificate and any inspection report to tenant within 7 days after execution of the lease.

Required Disclosures

5. Civil Code § 1938(e): If the premises have not been issued a disability access inspection certificate, the property owner must state the following:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, ***the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant.*** The parties shall ***mutually agree*** on the arrangements for the ***time and manner*** of the CASp inspection, the ***payment of the fee*** for the CASp inspection, and the ***cost of making any repairs*** necessary to

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