

# Top Leasing Tips for Corporate Space Tenants

By Jonathan Lee, CCIM

Tenant Rep Broker

Contact Telephone 843-991-4848

Email [JonathanLee@ChoiceRealtyUSA.com](mailto:JonathanLee@ChoiceRealtyUSA.com)

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By Jonathan Lee, CCIM; Tenant Rep Broker in Charleston, SC

- 1. Hire an Experienced Tenant Rep Broker:** Does Your Company rely on CPAs for financial matters, Attorneys for legal matters, and Managers for productivity matters? Of course! Relying on a Tenant Representation Broker is essential to handling Corporate Real Estate, particularly when considering real estate is the second largest line item expense on a company's Income Statement. Companies save thousands of dollars when they hire Tenant Reps to serve as their outsourced "Corporate Real Estate Department." If you are thinking you can save money by not hiring a Tenant Rep, think again. Listing agreements compensate the Landlord's Broker with an industry "standard" fee which the Landlord's Broker shares with the Tenant's Tenant Rep Broker, if there is one. The Landlord's Broker would prefer there is no Tenant Rep Broker so they can receive the entire fee even though the Landlord's Broker isn't representing the Tenant. There is no discount to a Tenant by not hiring a Tenant Rep as the full commission is paid on every listing whether you're represented by a Tenant Rep or not. The savings generated by our Company's Tenant Rep Broker typically ranges between 25- and 40-percent off occupancy costs.
- 2. Understand Your Objectives:** When we meet with prospective clients, we go through a detailed Needs Analysis with them to understand the strategic needs of their company and how the corporate real estate component can help them be more competitive in the marketplace, attract strong talent, be easily accessible for their customers, and what are their specific geographic, facility, and financial requirements.
- 3. Negotiate Smartly:** The best book out there on negotiating, in my opinion, is Getting to Yes. And, the best piece of advice in that book is in understanding your BATNA (Best Alternative To Negotiating an Agreement). When you know your BATNA, you know that if current negotiations fall apart, this is the course of action you will likely pursue. Looking at your current situation, what happens if negotiations fail? What are your alternatives? Do you have options available in your current lease to create the flexibility you desire?
- 4. Start the Process Earlier Than You Think You Should:** If your lease is ending in the next 12 months, it's very important to engage a Tenant Rep now. It takes time to understand your company's ideal real estate solution, and the space that you're looking for may be like finding a needle in a haystack—it takes time. When we've located several possibilities—ideally, we want to have the landlords competing for your business—if time is on your side, you've got leverage. The more time you have, the more leverage and negotiating power.
- 5. Read the Lease (including all exhibits and regulations):** Once you have worked with your Tenant Rep to hammer out the most advantageous letter of intent, the next step is drafting a lease. Lease Agreements are written by the landlord's attorney (translation: the lease is written FOR the landlord, not the tenant). Be mindful of provision in a lease that would pose problems

for the daily operations of your business. Always ask your Tenant Rep to review the lease for business points that adhere to your Company's needs and find an efficient attorney who can ensure the lease is enforceable.

6. **Know Your Landlord:** As a Tenant Rep, I frequently run into a situation where the Landlord wants either a Personal Guaranty or a hefty-sized security deposit to ensure the performance of the tenant. In today's market (2009-2010), we also need to be concerned about the "credit" of the Landlord—are they going to go "belly up," or do they have the reserves in place to maintain their property? What happens to your Tenant Improvement Allowance if the Landlord files for bankruptcy? What about the level of service you expected when you signed your lease—how do you maintain this level if the Landlord is under financial stress? These are valid questions, especially when numerous landlords are in default of their loans and lenders are shying away from helping those who are cash-strapped already. Hire an experienced Tenant Rep to guide you to landlords with strong reputations and those with a strong financial history.
7. **Beware Less Than Market Rent:** Many times a low asking rental rate is simply the base rate. Then, there are additional operating cost pass-throughs which add to the base rent as additional rent. Ask for a cap on annual increases and understand what calculation method is normal in your market.
8. **Limit Operating Expenses to Limit High Rent:** Be sure your rent payments cover building or retail center operating costs not inappropriate expenses. I had one client who recently lamented about paying for 1<sup>st</sup> class air travel expenses for their landlord to fly from Vermont to Charleston! Avoid having to pay for capital improvements, high executive salaries, markups on utilities and above-market payments to affiliates of the landlord. Insist on your right to audit Landlord records.
9. **Abate Rent if Damages Prevent Business Operations:** You should not have to pay rent during the time you cannot use your space. If a fire on another floor prevented your employees from reaching your office or the ceiling collapsed due to a leak, this will make operating your business difficult. You shouldn't pay rent during those times.
10. **Have the Right to Assign or Sublease:** There are a number of reasons your company may need these rights. The company could be sold, merged, or the company may outgrow space or need to downsize. At the very least, be sure your lease allows you the right to assign or sublease which shall not be unreasonably withheld, delayed or conditioned.
11. **Demand a Concession if Your Lease has a Relocation Clause:** For smaller tenants, the landlord typically reserves the right to relocate your company to an alternate space in the building. If this sounds like a horrible disruption to your business—you're absolutely correct. This means you'll have to pay for the move, print new stationary, and the new space may not be configured as well as the old. Be sure the landlord pays for the move and related expenses incurred. The new

suite needs to meet your needs and you shouldn't pay more in total rent simply because the space they moved you into is larger. If the space doesn't work, demand a termination option and compensation for moving into an alternate building.

12. **Condition upon Return:** Some leases, particularly Retail Leases, require the tenant to return the premises at the end of the Lease term in the same condition as when they were at the beginning. This is unreasonable if you started out with a "vanilla box," which was then built out to your specs. Be sure to qualify that "with normal wear and tear and any damage by casualty excepted."
13. **Landlord Consents:** Similar to the rights of an assignment or sublease, always be certain that a Landlord's consent will not be unreasonably withheld, delayed, or conditioned.
14. **Review Default Language Paragraph:** This paragraph can put you in default by simply not sending in a copy of your certificate of insurance which is absurd. Another reason of tenant default could be that you didn't fulfill an obligation in a timely fashion. At the very least, be certain you are entitled to a written notice of a default and a period of time cure the default prior to the landlord being entitled to take any action against you.
15. **Never Depend on Verbal Commitments:** I met with a tenant who told me his landlord's property manager had promised they would install new signs within a retail center. It was never done. Never rely on verbal commitments—if you expect something to be done, it must be in writing.
16. **Understand the CAM Charges:** Sometimes we will see a Lease Agreement which has a property management line item under Common Area Maintenance charges as well as a Lease Administrative fee. This additional fee can usually be waived if it is caught in the lease prior to signing the document.
17. **Insist on a Nondisturbance Agreement:** This ensures that if the landlord's lender forecloses on the property, your lease cannot be terminated. Also be certain the lease states any future lender that acquires the property via foreclosure cannot terminate the lease.
18. **Insist on Self-Help Clauses from Smaller Landlords:** if you state in your lease that you can fix a problem if the landlord does not, and then reduce your rent payments by the amount it costs you, you provide an incentive for the landlord to do the work themselves.
19. **Negotiate a Low Holdover Rate:** The holdover rate is that rental rate charged to a tenant who stays in the space after the initial lease term has expired. The holdover rate can often be equal to 200% of the current rent.

20. **Know what services you're paying for and what is paid for by the landlord.** Your lease should describe in detail the condition of the space you are leasing and all services for which the landlord is responsible. Be sure the lease describes the list of services included in the rent such as utilities, heating, electric power, restrooms and maintenance thereof, janitorial services, and any others you might expect the landlord to provide on their nickel.
21. **Build Flexibility into the Lease with Options:** Consider having these options in the lease if they relate to your situation: Option to renew; option to purchase; option to terminate; option to expand; and, option to relocate. Each type has its own advantage.
22. **Distinguish between Net Leases and Full-Service Leases:** Net leases make the tenant responsible for all expenses of the pro-rata proportion of space they occupy, as if they were the owner. Full Service Leases keep the responsibility upon the Landlord.
23. **Always have a No-compete Clause in a Retail Lease:** This prohibits a person or business from operating a nearby business that would compete with one of the parties to the contract.
24. **Right of First Refusal:** Unlike the options, this right can only be fulfilled when it is offered by the landlord. A right of first refusal might give a tenant the right to buy the building or the right to take contiguous space or right to renew.
25. **Know the Difference between Usable Square Feet and Rentable Square Feet:** Landlords often quote the square footage of a space in rentable square feet which, in a multitenant building, is higher than the usable square footage due to the core values. Landlords may offer tenant improvement allowances on a usable square footage price per square foot. When analyzing space alternatives on a quantitative basis, be certain comparisons are using the same type square footage and that spaces are based on the BOMA quality standard of measurement.

These lease tips were written by Jonathan Lee, CCIM, Tenant Rep Broker with Choice Realty, Inc. in Charleston, South Carolina. Mr. Lee works as a Corporate Real Estate Services Advisor for several companies located throughout the Lowcountry and specializes in Transaction Management for companies needing assistance on a national basis. Contact Mr. Lee at (843) 991-4848 or via Email at [JonathanLee@ChoiceRealtyUSA.com](mailto:JonathanLee@ChoiceRealtyUSA.com).