

THE MOST IMPORTANT LEASE QUESTIONS

YOUR QUESTION: "CONDEMNATION"

We've received requests to discuss lease clauses that we have not covered in previous issues. We welcome your submissions. Email them to me at joea@Lnd-mrk.com, fax them to 952-241-1555 or call us at 952-837-9170. If you submit a lease clause question we will not use your name or identify your company (and won't tip off your landlord).

Question submitted by a tenant: "Do I have to worry about my building getting condemned?"

Could "condemnation" happen to your building? Condemnation occurs when a city, county, state or federal government body takes a portion or all of the property using the "eminent domain" statute. Some of these situations have had considerable visibility, such as the Best Buy headquarters in Richfield. In that situation, building owners and tenants were forced to relocate and pay much higher rent. Some received compensation, but many would tell you it was not enough.

Should you look at condemnation as a threat to your building if you are considering leasing or renewing your lease? For many buildings, especially newer ones, it's not an issue even though the lease defines the situation. In those situations you should attempt to secure the right to seek just compensation from the condemning authority.

If the building is new, and surrounded by new buildings and road infrastructure, there is very little potential of condemnation. However, if you are in an older building, whether office or warehouse or retail, you should consider the possibility of condemnation. As proof of that, consider all the recent conversations of office buildings to residential condos or the condemnation of buildings to allow for new high rise residential developments.

Assume you had a business along the 394 corridor a few years ago and you were a retail or office tenant who survived on easy access. Your property was not actually condemned but your access was severely compromised. You could have pursued a lease termination if the road construction compromised your operation or sought rent reduction during the construction period.

In a pure condemnation you could be told that the building is coming down and you must move. In the real world of condemnation uncertainty is the norm. Be ready for inevitable delays. One of our clients was told to be prepared to move in six months, then eight months, then twelve months. You might be told you have to be out in a few months ... then be informed in the next meeting the project is on hold. This is an awful situation for any business operator or owner. You must plan to move without a certain move date.

All a tenant can really do is make sure that the lease allows them to negotiate on their own behalf with the condemning authority. They must make certain that the lease allows them to seek compensation for rent differential, moving costs (including but not limited to moving the office), retail or warehouse space, phones, phone lines, stationery, etc.

These items are in addition to the fact that the tenant may have had a very favorable lease rate and terms which will now be gone. If rates are now 20% higher in the area the tenant should at least be allowed to seek compensation for the rent differential. Owners will want to control this so they can gain maximum value from the condemning authority for their property.

Make sure you don't give away your rights to seek a just and fair financial response for a condemnation.

TAXES

Property taxes are a major consideration when reviewing property alternatives. Minnesota remains a state that relies heavily on commercial properties for property tax revenue, even after the tax relief that has recently occurred. You can't avoid paying property tax but you can be as informed as possible about what can be done about it and how to avoid choosing a building that is about to receive a big tax increase.

In Minnesota property taxes are paid in arrears. For example, the amount paid in 2006 is based upon the assessed value on January 2nd of the previous year. If the building you are about to sign a lease for has just been sold, and it's July, then look for a potential increase in valuation next year. That's assuming the property sold for more than its present tax value.

However, most listing agents use only what the property manager has budgeted for taxes. In many situations, they don't know what a property's valuation is and don't care to find out. Their job is leasing space, not to inform you that your cost per square foot may increase tremendously in the next year or two. We handle this differently. We represent tenants, not the landlord. Landmark Partner's job is to discover and report this information to you so you can be prepared for an increase.

Is there anything you can do about increases in property taxes? Some clients negotiate a lease clause that allows them to protest the tax valuation, at their expense. If successful, the landlord will reimburse them for reasonable expenses of the tax appeal. There are many attorneys who take tax appeal cases on a contingency.

If you are looking at moving into a building that is experiencing higher vacancy your tenancy will increase the value of the building. Your tenant improvements will add value too. The tax assessor will get a notice of a building permit and then reexamine the building's valuation as a result of your tenancy and improvements.

If you can find a property where you can take advantage of existing improvements and limit the amount of renovation you can benefit in two ways: lower initial net rent and a smaller increase in over all building valuation. This reduces future increases in taxes as well.

DAMAGE AND DESTRUCTION

What do you do if the building you are in is damaged by fire, wind, rain, or a tornado? A few years ago a fire on the fifth floor of a six story office building in Edina resulted in smoke damage to the upper floors and water damage to the lower floors. Besides the mess and inconvenience, many tenants could not occupy their space for some time.

Some typical problems often result from such disasters. How long before a tenant can move back in, salvage records, and replace or repair office furniture? What about paying the rent, even when the space can't be occupied? What does the lease say about paying rent while vacating the premises? How long does the landlord have to decide to repair or rebuild the premises, or the entire building if necessary?

There are many situations like these that occur every year. Some minor are minor, but many certainly are not. An example from one of our client's experiences: water clean up after an over zealous fire department got a chance to practice their craft. Of course, the containment of a fire is the mission, but a fire department may cause more damage than the contained fire itself does.

What does Partial Destruction mean? Is it to the entire building, or just your premises, or your floor? Why does the landlord need 120 days to decide whether they want to repair or not? How long will you be out of your space? Can you terminate your lease? Are you required to continue to pay rent if you can't occupy the space? Does your insurance cover business interruption? Each of these considerations must be looked at carefully when you are negotiating a lease. Pay attention to this particular clause during initial negotiations. This action can save you a tremendous headache later.

Finally, what if the damage is to the parking areas? What if the parking structure or lot are damaged and your employees or customers can't use it? You may want to add a lease clause that protects you if the parking area is damaged. Then, either the landlord must make reasonable accommodation for your employees and visitors to have parking, or a portion of your rent must be eliminated (abated) until the parking has been restored to the pre-damage condition.

FEATURE ARTICLE INDEPENDENT GENERAL CONTRACTORS ... WHAT YOU NEED TO KNOW.

by Tom Rushing, Rushing Commercial Construction

Let's answer a few questions:

- What's an "independent general contractor?"
- Why would you need one?
- What alternatives do you have if you need a contractor?

If you are a tenant looking for lease space, you probably have a real estate agent representing you. Real estate agents will often say, "... the landlord will bid out the work," and will then do so using the landlord's own in-house construction company to develop the bid and specify the work to be done.

To answer the first question, an "independent general contractor" is just what the term suggests ... a provider of renovation and construction services that is not beholden to the landlord - or anyone else. An independent general contractor is in a position to act in the best interests of all parties, including the tenant. An independent general contractor has a strong incentive to deliver the best value. He has no repeat-business arrangement with the landlord, or anyone else, and relies on recommendations to keep and grow business. A truly independent contractor derives his living from his reputation. A good value is remembered and talked about. A poor value is broadcasted.

The next question is "Why would you need an independent general contractor?" Simply put, if you or anyone needs construction services, an "independent" who is also a "general" contractor can deliver no-nonsense, competent guidance and results on a broad scope of work.

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Executive office facilities ideal for accounting and financial service firms, legal, insurance, medical professional, professional service firms. Outstanding visibility and potential signage. On Hwy 55 just east of Hwy 100 - easy access location. Only minutes from downtown Minneapolis.

The information contained herein has been obtained from the owner of the property or from other sources we deem reliable. We have no reason to doubt its accuracy, but we do not guarantee it.

Rushing Commercial Construction

Tenant improvement construction services for office, industrial, retail and medical clients.

From my personal experience working in a "captive," landlord-controlled shop, I know how jobs can be bid and, more importantly, what can be missed when bidding a job. My job is to interpret the plans and specs, visit the property with all of the sub-contractors and pursue aggressive pricing for all services ... to deliver the renovation at the most economical price possible. Sometimes that means we make recommendations and/or revisions to the plans to capture conditions that allow us to reduce overall project cost.

The last question ... "alternatives." You have the option of choosing independent or, frankly, "biased" construction assistance. The discussion above points out the advantages of having the contractor in your corner, looking out for your interests.

My company, Rushing Commercial, brings over twenty years of commercial construction experience, including work in all the major suburbs. We deal with dozens of subcontractor specialties: electrical, mechanical, structural, and many more. By taking advantage of our knowledge and expertise, the owner can save thousands of dollars in renovation costs, which usually translates to lower rent for the tenant.

If you're working with Landmark Partners you have one of the best tenant advocates in the business. Landmark will make sure that you get a good economic deal on the renovation of your space. They will insist, just as you should, that an "independent general contractor" handle the details of your space renovation.

Tom Rushing
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Read more about the most important lease clauses in upcoming issues of Landmark News.
Submit your lease questions to Joe @ 952-837-9170 or joea@Lnd-mrk.com.

DEALS DONE

WITH JOE



Landmark has completed deals throughout the twin cities. For more "Done Deals" in your area, check out our website at www.Lnd-mrk.com.



Trader Joe's:

The "good news:" You've sold a property, and now you have a gain. The "bad news:" The tax man wants a big piece of your gain. That's why Section 1031 of the tax code was created. It allows a seller to protect and defer a gain to a future date by reinvesting in like-kind property. However, if not handled correctly, many pitfalls can expose new investments to taxes.

We recently helped a client who had received "good news" to purchase the Trader Joe's in St. Louis Park. Please take time to visit this eclectic and unique retailer.



Fisher and Williams Bldg. Minneapolis, 12,500 sq ft:

We recently represented First Choice Global Marketing ("First Choice") in their purchase of a new corporate headquarters in the warehouse district of Minneapolis. First Choice had a tremendous opportunity: merge two companies into one location. Their major client was downtown, and they really wanted to look at owning a new building. We found them the Williams Bldg and the adjacent Fisher Box Bldg as future expansion and investment.

LANDMARK NEWS

LANDMARK PARTNERS COMMERCIAL REAL ESTATE SERVICES

LANDMARK NEWS IS PUBLISHED BY LANDMARK PARTNERS, INC. Each issue contains commercial real estate news and events as well as tips on how to buy, lease or renew your office, industrial or retail space.

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Do you know what the most expensive lease clauses are, and what they could cost you?

Did you know we could save you 20 to 30% on a lease renewal?

Do you have a lease coming due in the next 12 to 18 months?

We've got some news you can use. If you want answers, turn the page.

IT'S YOUR MOVE... AND WE'LL HELP YOU PLAN AND MANAGE YOUR RELOCATION

RELOCATION RESOURCES

Attorney	Accounting	Our commercial real estate services offer significantly more than traditional brokerages, backed by our extensive experience in the local business environment. We'll act as your relocation manager. Researching, developing and publishing a project specification: including your space requirements, geographic parameters and time table for relocation.	
Office Furniture and Services 952-278-9202 www.workplace-2000.com	 BARRETT MOVING & STORAGE 952-944-6550	Insurance	Survey Title
 PARSONS ELECTRICAL - TECHNOLOGY - TECHNICAL SERVICE 5960 Main Street NE-Minneapolis, MN 55432 Phone: 763/571-8000 Fax: 763/571-7210 www.parsonscorp.com 479 Haywood Avenue N-St. Paul, MN 55128 Phone: 651/735-2195 Fax: 651/735-2196	RUSHING COMMERCIAL CONSTRUCTION 13768 Reimer Drive Maple Grove, MN 55311 Telephone 763-420-8414 • Fax 763-420-8427 trushing@rushingcommercialconstruction.com	90% Financing Available John Thwing 612-316-2501 The SBA Guy!	

Our staff manages the process of lease or purchase negotiation. Coordinates the planning of your relocation: moving company bids, voice and data cabling and the time table associated with furniture and fixture installation required to move your organization.

We manage the entire process and coordinate the move from start to finish...so you can concentrate on managing your business. It's your move. *We'll make it a success.*