

Tenants' Survival Guide In A Depressed Market

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As the economy continues its downward spiral, tenants are feeling the strain on business and cash flow, which makes it difficult to make lease payments. As a tenant, you have options. Now may be a good time to examine your existing lease agreement to determine if there is an early termination provision, which would allow you to “buy out” the remaining term of the lease by paying a few months rent. In addition, examine if the landlord is currently in breach of any of its lease obligations, which may allow you to terminate the lease or seek other concessions. If you do not find any lease provision that may grant some relief, there is still hope. Tenants can approach a landlord with an open and frank discussion as to how income and cash flow are being affected by the depressed economic conditions. You can then make a case that if the lease is not modified, the business may have to declare bankruptcy or close its doors, which would make the collection of rents that much more difficult for the landlord.

In the past, landlords were not so sympathetic. However, as economic conditions worsen, the market value for rents decreases as rental inventories, bankruptcy and store closures increase. Under these conditions, landlords have become more willing to renegotiate existing leases. In addition, if a tenant has five (5) years or less on its lease, now is a good time to begin lease renewal discussions. If you are close to renewing the lease and the landlord knows you may vacate the space, given the amount of inventory available and reduced market value of the rental, landlords are encouraging tenants to renew on favorable terms. However, landlords may request that a tenant agree to either an extended term (i.e., ten (10) years) or expanding their existing space in exchange for favorable terms. These landlords wish to trade favorable terms to tenants in exchange for long term stability, because landlords would rather have a tenant than no tenant at all.

A Tenant's Options

There are numerous options available for tenants in seeking relief from a landlord. These include, but are not limited to:

- Temporary or permanent reduced rental payments;
- Free rent or holiday periods;
- Substantial tenant improvement allowance upon renewal; and
- Limiting or capping common area maintenance charges and real estate increases.

Finally, this is a good time for you, as a tenant, to examine certain provisions in the lease agreement including security deposit amounts, personal guarantees and assignment and sublet provisions. Landlords may be more willing to renegotiate these provisions in order to keep a tenant from vacating or going out of business.

Good News for Tenants

Also, there is some good news for tenants. The depressed economic market also provides opportunities for “mom and pop” one-off specialty retailers to obtain space in unique centers and malls and other desirable premises that landlords would not otherwise be willing to rent to such “small” retailers. Landlords need to fill space in order to make and sustain cash flow. Further, if a tenant is thriving in this economy and thinking about growth, opportunities to expand a tenant’s existing space or relocate to a larger premises, at favorable rents and terms, are abundant.

So if you are a tenant approaching lease renewal time or struggling to make rent payments, it is a good opportunity under these market conditions to renegotiate the terms of your lease. Landlords are not pushing back as much as they used to do, and they recognize, in these tough economic times, it is more profitable to try to preserve their relationship with existing tenants than to replace a vacancy.

Although renegotiating leases is a great opportunity, it can be quite complex. Landlords who have financing in place on their existing buildings may need to seek lender approval for any such lease modifications. There may be many layers of approvals that lenders will require, and the negotiation itself can be problematic. Don’t wait until the lease expiration date approaches or the business fails. Allow sufficient time for lease renegotiations and seek appropriate advice from legal professionals during the process. Einhorn, Harris is ready to assist you and your clients as we all examine ways to

survive in these challenging economic times.