

# WHAT AMAZON AND YOU NEED IN A NEW LEASE

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As seen in Forbes*

With headlines of Amazon toying with politicians around the country like some demi-god sizing up new lands to conquer, my mind turns to the more prosaic. What should a Master of the Universe insist on in his or her new headquarters lease? What should you have in your lease? Whether it's your headquarters or just office space for your business, there are critical terms you shouldn't overlook.

## The Big "Big Picture"

Certainly, Amazon needs virtually unlimited expansion rights — for potential growth into adjacent properties. This may work if you are dealing with just one landlord which owns a large portfolio of nearby buildings. But, it is a far harder task getting an option to lease space from other, nearby landlords who get nothing from the initial lease.

Now consider the U-turn where Amazon wants to terminate the lease early. Can Amazon even get termination rights? Most likely, but it will need to provide advance notice and pay a hefty penalty.

How much money will the landlord provide for renovations and nifty improvements — like the drone landing pad? And where do you park all of the bikes, scooters and hoverboards? Needless to say, just the amenities and services portion of a new Amazon lease is going to be more than a few pages.

But, forget Amazon — just for the moment. (Seriously, who could live without two-day shipping for paper towels?)

## City Site Versus Cow Pasture—and Other Vital Business Terms

Any business moving its headquarters — or any important office space — has plenty of business issues to address. Of course, the first consideration is location and all of the PROS and CONS that come with a particular city and location. In one place, you may land tax incentives, but have to comply with

local laws that increase your overall cost of doing business. In another spot, you may deal with terrible rush-day traffic. If the mass transit is decent, you may cope by plopping down in the city. Or, you may go retro and take over a suburban office park where you don't need to leave the campus to get work done—and they practically pay **you** to take the dinosaur off their hands.



You also need to anticipate, and then prevent, a whole host of problems in your new lease. Yes, size, location and term are essential. Rent is also paramount — and can be much more complicated than you might imagine. But, there are many great brokers to help you calculate long and short-term costs, as well as the variables — such as CPI increases and cost pass-throughs — that can upset your projections.

What building systems will the landlord provide? Will the landlord provide a backup generator or give you space for your own? Will you have roof-top rights for communication equipment — or your Sikorsky? Will you get a big sign on the building, as well as naming rights?

If you've really got Amazon-like bargaining power, consider this leasing Death Star. One overlooked — and almost unheard of — pro-tenant provision is a "ratchet down." Brief background: Whenever you see a long-term lease and a great tenant who is paying rent well above prevailing market rents, the tenant got caught up in customary and inflexible annual rental increases that, figuratively, assume all trees grow to the sky and none ever fall down. Well, this Death Star addresses the periodic "Timber!" in rents during recessions. With a ratchet-down provision, if prevailing rents go down, your rent goes down too. (Well, there goes all my holiday-ball invitations from the landlords.) The truth is there is no reason your rent should always go up and never down — especially if there is a decline in the economy and prevailing rents cave. "A ratchet-what?" Yes, it's rare. But, when you're bargaining to rent a big chunk of a city, you get some special goodies.

## The Legal Stuff

The legal issues are also critical. Certainly, you need the ability to assign your lease and sublet portions of your space. But, you should also try for another rare concession. Try to get a complete release from all lease obligations if you find a good, credit-worthy replacement tenant that meets the landlord's financing and other needs. Again, rare, but incredibly beneficial in lightening up the liabilities on your balance sheet if you don't need the space anymore.

Other key legal provisions minimize the downside of any deal. For example, limit your exposure for damage to the building by requiring the landlord's — or your — insurance to cover any major disasters. Technically, you also want waivers from your landlord and its insurance companies, so they don't come after you to recover damages. You'll also need your own insurance in case someone on your team harms other tenants or nearby businesses and property owners. Simply, you need the right amounts of the right kinds of insurance. Remember, you're not just successful. You're a target.

Even if it is unlikely, you could breach the lease and should limit your exposure. Require the landlord to attempt to relet your space and otherwise mitigate its damages. Get rid of one-sided provisions that allow the landlord to rent every other vacant space before it tries to relet yours. Similarly, nix the landlord fantasy of accelerating your rent and requiring you to pay years of rent in a lump sum in the event of default. Make the attorneys' fee provision mutual so that if you are in a fight, you are battling on a level playing field. Any experienced lawyer will be itching to add other necessary protections.

## The Zen of Successful Leasing

To successfully lease space — any space — you need the right mindset. Consider the following life lesson: People often mutate when bad things happen. Imagine your building burns down because of faulty wiring. Now take your average

“straight-shooter” landlord. They always say stuff like “my word is my bond.” Guess what? Disaster strikes and these folks turn into Professor Tom Hanks studying the lease like it has clues from The Da Vinci Code. I call it “praying over commas.” People who never even read the lease are now pointing to punctuation that they claim makes you responsible for EVERYTHING. So, get it right and get it in writing.

That last point bears repeating. If you ever get into a dispute, what someone **said** only gets one-tenth of the credibility that it should, whether from the other side or from a judge and jury. But, whatever someone **wrote** gets ten times the credibility that it should. So, get it in writing.

And don't be bashful. Get rid of the crazy lease provisions. For example, landlords have gone berserk when it comes to provisions allowing them to disrupt tenants to renovate their properties. Put a veto on that. Likewise, strike those provisions where the landlord does not guarantee any services. Rather, insist on rent abatement and rights to terminate your lease when the landlord fails to furnish essential services. Further, limit the landlord's ability to terminate the lease if there is a fire or other casualty, so long as the building can be rebuilt per then-current code and the landlord can keep or get financing.

There's more. **P-l-e-n-t-y** more. But, here's the reality. In most places, tenants' bargaining power has been increasing and landlords have been in denial or have just refused to acknowledge tenants' growing bargaining power. Tenants are using space more efficiently — you don't see a lot of offices filled with paper or books, there are fewer private offices and more shared spaces, and even server rooms are evaporating into the cloud. Plus, a bunch of employees have conned their companies into letting them “work” from home. The bottom line is that tenants, from Amazon to your average S&P 500 company, to any two college dropouts working on their app, now all have more leverage. To paraphrase Spiderman's uncle, with great advice, comes great leverage. Use it wisely.

## ABOUT JACK GARSON



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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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