MALL RENOVATIONS: THE PRICE OF BEAUTY

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The biggest challenge during a mall makeover can be surviving it

Few retail businesses are immune to sales woes caused by renovations that impede sales traffic. While most will see the "big picture"–down-the-pike sales and traffic spikes once the improvements are complete–it is the rare retailer that does not bemoan the obstacles while they are in place.

It happens all the time. Current highway access to a regional shopping center is slated to undergo a major improvement, but the 18-month project will narrow the current access to one lane and cause significant traffic delays and potential lost sales. An interior mall renovation–thrilling news for its tenants and customers–will necessitate closing off part of the mall for four months and routing customers through out-of-the-way alcoves. Flooring upgrades near a mall's center court will require barricades to be erected in front of three stores for three days, impeding traffic or preventing access altogether.

Municipalities and developers make it a practice to take all these potential obstacles into consideration when planning a major improvement project. But, sometimes, the bigger picture takes precedence over daily travails. Attorney Jack Garson, the founding principal of the law firm Garson Law, LLC, Bethesda, Md, has developed a checklist of sorts, designed to provide tips toward necessary protection to tenants that are involved in a mall renovation.

"Inevitably," said Garson, "every retail property will undergo a major renovation. And every tenant will either thrive, barely survive, or be put out of business during the process. While some protection exists as a matter of law, there are basically five keys to sustaining a successful tenancy during renovation."

There is an overriding theme in Garson's renovation top list: Knowledge is power. The earlier you exercise that power (e.g., during lease negotiations), the better your chances of surviving renovation.

Five Keys to Surviving Mall Renovation

1. Understanding the impact of renovation. Entrances, drive lanes and parking could be blocked. Barricades and scaffolding may obstruct signs and storefronts. Construction will likely generate noise and dust. Your customers may think you are closed. Moreover, the landlord's standard lease may place the cost for renovation squarely on your shoulders, may require you to replace your storefront or signage–at your own expense–and may require you to pay full rent despite the diminished benefits you are receiving.

2. Protect your business. Bargain for "no build" areas in front of your store and in critical parking areas and entrances. Prohibit minor renovations during business hours and major renovations during important shopping seasons.

3. Impose specific restrictions on dust, noise and other disturbances. Obligate the landlord to honor general standards where every detail can't be anticipated.

4. Recognize that, sometimes, crippling disruptions can't be avoided. In these instances, you may wish to reserve the right to terminate your lease or pay percentage rent, instead of the base rent.

5. Eliminate or limit the landlord's ability to pass along renovation (as opposed to maintenance) costs.

Be aware that existing laws might provide remedies–even when you have not negotiated for appropriate protections. In many states, the law may obligate your landlord to provide space that is fit for your intended use. Substantial disruptions that deprive you of the ability to use your premises for a substantiated time period may entitle you to compensation or the right to terminate your lease.

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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