

By: *Jack Garson, Esq.*

If you just signed a lease, you're probably overpaying. If you are about to sign a lease, you probably will overpay. Nowadays, too many leases are 50-100 pages of complicated, mind-numbing provisions filled with costly traps for the unwary. No sane businessperson reads them. No wonder you overpay.

So it's not just a question of getting the deal done, all you need is a signature for that. You should understand where you're overpaying and then create the leverage to fight it. Get the deal that experts get.

## Size Does Matter

Your rent is based on the size of your premises. Usually, the landlord plugs a number into your lease that says how many square feet you have in your premises. Most tenants blindly assume this number is correct. But, the landlord could easily be mistaken. A difference of just 50 square feet in a lease that costs you \$50 per foot, would cost you \$25,000 over the life of a ten year lease. By the way, these mistakes happen all of the time and the mistakes grow with the size of the space. You could easily overpay six figures during the term of your lease if you are renting a big space. Before you sign your lease, have your space measured. Many landlords are very receptive to fixing a discrepancy before they have gotten too far with a deal and will readily fix a legitimate measurement error.

## Operating Expenses: Welcome to the Jungle

In a typical lease, especially office and retail leases, landlords require tenants to pay a variety of expenses to operate their building. But it's a jungle and there is a lot of quicksand. For example:

- You could be paying extra expenses because part of your building is vacant. This is the landlord's problem and you shouldn't be subsidizing the cost of the landlord's vacancies.

- You might get stuck paying for faulty construction of the building, correction of building code violations, renovations that the landlord wants so it can improve the building, all of which are typical landlord costs.

- You could be paying to repair damage to the building because the landlord didn't buy enough insurance or has a large deductible.



- You could even pay the landlord's legal costs if the landlord gets in a fight with someone else. Aaackk!

It's not "standard." It's just problems buried in fine print. Do your homework and determine what is truly customary. Then, negotiate a fair provision that has you properly sharing in building costs, but doesn't have you paying for your landlord's holiday party or political

contributions.

## Renewal Rent Provisions

The last thing on the mind of most businesspeople signing a new lease is the rent that they will be paying in five or ten years. But, as we all know, time has a habit of flying by. Next thing you know, you're figuring out if you're renewing your lease or shopping for new space. If there is even a possibility that you're staying put, nail down reasonable renewal provisions in the lease.

- First, get one or more options to renew. Generally, it's fair to get the same amount of time in option terms as you commit to in the initial term of your lease.

- Second, you should have the right to renew at the prevailing rent for renewals of similar leases — called the "market rent." But, watch out for the wording. Most renewal provisions define "market rent" as the same rent other tenants pay. However, those other tenants might be getting extras — like rent abatement for a few months and money for alterations. The

landlord charges for these extras — there's no free lunch — so these tenants pay higher renewal rents. If you are not getting those extras, you should not be paying the higher rent paid by those other tenants. Make sure your renewal rent compares apples to apples, not apples to yachts.

- Third, don't count on the fact that you and your landlord will agree on a fair renewal rent and don't leave it up to the landlord to decide. Instead, create a process that ultimately let's a neutral third party decide on what is fair. Just that fact that you have a fair decision-maker almost always forces the parties to agree upon a reasonable renewal rent.

### **The Really Hidden Charges**

Some landlords get crafty and look for a variety of ways to turn lease provisions into profits centers. You need to watch out for these hidden charges:

- Construction supervision fees. Plenty of landlords try to charge you fees to supervise the construction of your premises. In reality, some landlords don't supervise anything — except for the cashing of your check. These landlords are so transparent about this ripoff that they charge a higher amount to supervise your construction and then a lower amount to NOT supervise your construction — that is, you might pay 2% of your construction costs for landlord supervision and 1% so they will leave you alone. I think this is called “protection money” in certain circles.

- Fees for approval of subleases, assignments and other transactions. Okay, here's how some leases work. When the landlord needs your cooperation, such as when the landlord is refinancing its building, the landlord gives you a bunch of papers to review and sign. And if you need your lawyer to check everything out, you eat those fees. You're being a good tenant. But, when you want to assign your lease or alter your premises, you need the landlord's approval and you have to pay the landlord a review fee and reimburse the landlord for any out-of-pocket cost the landlord incurs to review your request. So, you pay coming and going. What's a savvy tenant to do? First, find these fees in the fine print. Then, delete them when you can and cap them when you can't.

- After-hours and holiday services. It's fair to charge tenants if they want extra heat or air conditioning — whether at night or on a holiday. But, it isn't fair to label normal workdays as “holidays” and then charge tenants if they don't want to work

in coats, caps, and mittens. Opening day for baseball is not a holiday. The “first snowfall” is also not a holiday. I am kidding to make a point. Some landlords shorten their business hours and expand their holiday lists so that they have the ability to charge extra for normal hours and days of operation. Also, get a fixed fee or formula for those times when you should be charged for extra services. Some landlords have leases that say they can charge anything. A fair lease provides a fixed amount with reasonable increases or provides a formula for a charge based on the landlord's actual costs.

### **Excessive Penalties**

You should pay your rent on time. But, it shouldn't cost you an arm and a leg if you don't. For years, leases typically had tenants pay a 5% late charge if the tenant was ten days late with the rent?plus interest at a reasonable rate if the tenant paid even later. Now, leases are popping up with late charges of 10% after the tenant is just five days late — and sometimes you don't even get that. Plus, some leases impose interest simultaneously at rates of up to 18% annually. Again, pay your rent on time. But, take away the landlord's howitzer. Trim these charges and get at least one free late payment per year. We all make mistakes.

### **Charges for Parking**

Cap them, for heaven's sake. I have seen landlords with half-empty building and short on cash suddenly decide that they are going to squeeze a captive audience — their tenants — by hiking the parking fees. As if the parking spaces all of a sudden became so much more precious at their “ghost town” building. Don't get mad, get caps. That is, cap the amount that your landlord can charge you for parking spaces. Start with a fixed amount and limit the annual increases?or at least provide that your parking charges can't be more than at nearby buildings.

### **Savvy = Savings**

Savvy negotiators get better deals. Create and preserve bargaining power. Start with plenty of time before you need the space — if you run out, you're more likely to cave on key points. Assemble a strong team of skilled, experienced advisors that know about the problems with leases. Solicit multiple offers from different landlords and get them competing for you. Keep that competition going until you have worked out all of the key points of the deal.

You'll pay less for 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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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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