

TOP 10 FACILITY ACQUISITION MISTAKES

The following list of common mistakes is the result of a survey taken among members of the prestigious International Tenant Representative Alliance (“ITRA”). Each participant drew from an average of well over 20 years of Tenant Representation experience, representing and advising national and local commercial tenants with hundreds of leases totaling millions of square feet. Most major U.S. markets were included.

#1 Most Common Mistake - NOT ALLOWING ENOUGH TIME

Facility research, property inspections and comparison analysis can usually be completed in a week or so by motivated companies already familiar with the local market. However, those tasks are only the tip of the “time drain” iceberg, and several commonly overlooked complications needing to be factored into the relocation timeline: (This assumes the space is not going to be taken as-is, which while possible, is unlikely.)

1. Negotiations with the Landlord and preparation of the lease can take weeks, (even months).
2. Once the Lease is signed the interior usually needs to be finished or renovated, which can take one to two months.
3. Before renovations can begin, building permits need to be obtained which can take one to two months – longer if the municipality is “backed up” or if the plans are rejected for a technicality.
4. Before permits can be obtained, architectural plans must be completed, and may take one to two months.

If existing facilities cannot be found which are acceptable, new construction can easily take 9 to 12 months or longer.

Bottom line: 6 - 12 months is a good time frame to use when looking for new facilities, even longer if experienced professionals are not used to guide the process.

#2 - NEGLECTING LONG-TERM PRIORITIES

Owners who think only about solving immediate needs face expansion problems very soon again! In addition to evaluating short term needs relative to square footage requirements (number and size of rooms), type of floor plan (open, private, or a mixture), communications needs, parking needs, access and security needs, etc., be sure to factor in long term needs. By obtaining facilities and lease terms which will allow the company to expand, downsize or relocate as circumstances dictate, business owners can avoid the unnecessary headaches, loss of business and costs associated with relocating. Examples of such important lease clauses include:

- Expansion right obligates the Landlord to provide Tenant with more space should it become necessary.
- Cancellation right (commonly referred to as a “kick-out” clause) allows the Tenant to break the lease under certain conditions such as when the Tenant needs to expand and the Landlord cannot provide them additional space on the premises.
- Extension right is similar to an option, and allows the Tenant to remain in the premises (a right of first refusal is a type of extension right).
- Sublet right gives the Tenant flexibility in that if it must relocate, it may sublease the space and mitigate the economic pressure.

Suggestion: After discussing the company's immediate needs and long terms goals with senior management in all departments, meet with leasing experts and space planners/architects to determine a) the most productive combination of office size and layouts (modular furniture, hoteling, size, amenity requirements, etc.), b) facilities which are flexible enough to service future needs, and c) certain lease clauses which will be negotiated into the lease document.

#3 - INADEQUATE REPRESENTATION

Unless someone in the company is already an expert in commercial real estate, most business owners cannot afford the time necessary to learn this complicated industry. Lack of knowledge combined with time pressures can cause unrepresented owners to a) make location decisions without being aware of ALL the choices, and b) make costly errors that cut into their profits and increase their financial exposure.

An experienced and specialized Tenant Rep counterbalances the Landlord's professionals, and will insure that the Tenant receives the best possible rates, terms, incentives and lease clause protections. Incredibly, this valuable service may cost the business owner nothing, since Tenant Reps usually share in the Leasing fees paid by the Landlord.

Using the wrong broker may lead to incomplete information, or conflicting loyalties because of hidden agendas or Landlord relationships.

Note: Business owners who do not use a Broker will likely not be aware of all the possible facility choices. An experienced Tenant-Rep broker has developed an extensive network, and commonly finds facility choices which are not yet vacant or on the market.

Business owners should also keep their broker involved in the expansions, contractions, renewals and extensions that occur during the lease to prevent uninformed decisions that lead to lost opportunities.

#4 - COMMENCEMENT DATE NOT TIED TO BUILDING COMPLETION

This has been a disaster for many inexperienced Tenants who found that unexpected delays in the planning, permitting and construction stages ate into their rent-free build-out period and caused budget nightmares.

Suggestion: Business owners should always propose a clause to the lease which provides for an extension of the lease commencement date if pre-opening delays are encountered which are beyond their control. Your professional can suggest some good lease language.

#5 - UNDERESTIMATING THE CONDITION OF THE PREMISES

Tenants who take a property "as-is" put themselves at great risk. Even when the space looks fine and has been previously occupied, building codes may have changed or the unit's infrastructure may be broken or inadequate.

Suggestion: It is best to have the Landlord guaranty the space is up to current building, fire, safety, zoning and ADA codes. It is also good to have the Landlord guaranty the condition of the electrical, plumbing, heating and air-conditioning systems for the first 60 to 90 days (if not the entire term of the lease).

#6 - USING THE LANDLORD'S PROFESSIONALS

Tenants should use architects, general contractors and legal counsel under their control to create and review the various space plans, specifications, costs and documents. Otherwise, Tenant may receive inferior designs and/or fixtures that are less efficient and may dramatically increase yearly operating costs.

#7 - MISUNDERSTANDING THE TRUE SPACE COSTS

Business owners who are inexperienced with commercial real estate are often unable to perform true “apples to apples” analysis when comparing different facility choices. It can be complicated, even for the pro, to compare the different lease types such as: Full Service, Gross, Semi-Gross, Net, Triple Net, etc. Additionally, each Landlord's interior finish levels, Tenant Improvement (TI) contributions, lease incentives and a myriad of other factors need to be part of the comparison equation. This confusion leads many owners to make less than optimum decisions.

#8 - PAYING TOO MUCH RENT/ NOT ENOUGH LANDLORD INCENTIVES

Companies which do not obtain accurate, current market research may pay too high a rental rate or receive too few incentives such as free rent both before and after lease commencement, discounted rent for various time periods, Landlord contributions to tenant's build-out costs, landlord improvements to the space, limits on future rent increases, etc.

Landlord “flexibility” changes constantly depending upon many factors including current occupancy rates in both their building and the competition, lease length, tenant's use, parking requirements, financial strength of tenant, etc.

Negotiations are especially important with lease renewals, since Landlords are most competitive when the space is placed on the open market.

#9 - NO DISASTER PLANNING

What if a hurricane or fire destroys all or part of your premises? Many Tenants don't realize most leases allow Landlords an unlimited time to rebuild the premises, and although rent may be abated, the Tenant is NOT free to go lease other space and get on with business!

#10 - NO OUTSIDE INCENTIVES

When a company relocates it may be possible to obtain substantial economic incentives from local government. These incentives include tax rebates, relocation assistance, payroll subsidies during employee training, infrastructure improvements and others. Many times the statutory incentives can be negotiated up very substantially, and an inexperienced company may leave millions of dollars on the table.

Suggestion: Use an experienced “location analyst & incentive negotiator” to make sure you obtain the best incentives possible.