

**COMMERCIAL
TENANT'S LEASING
TRANSACTIONS GUIDE:
FORMS AND STRATEGIES**

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ALAN D. SUGARMAN

JOEL J. GOLDBERG



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Dedicated to Professor Sheldon Tefft (1900–)
Professor of Real Property and Equity
James Parker Hall Professor of Law
University of Chicago Law School (1929–1968)

Ignoratis Terminis Artis, Ignoratur et Ars

Alan D. Sugarman (Class of 1971)

In memory of my mother, Rita Goldberg.
Joel J. Goldberg

PREFACE

This book is designed to guide tenants, and their counsel, in identifying leasing objectives, evaluating leasing alternatives, and negotiating leases to achieve the desired objectives. Chapters have been written by leading practitioners and generally discuss leasing practice rather than leasing theory. Most chapters include forms to illustrate issues discussed in the text and to assist readers in resolving issues.

Although the general topic of commercial leasing is addressed, the focus of the book is on the leasing transaction, not just the lease. We believe that a tenant that does not view the leasing of space as a transaction, a process involving the evaluation and resolution of related issues, may not make satisfactory leasing choices. Such a tenant may, for example, forego other locations that are more suited to the tenant's physical requirements, and/or less costly space than the space ultimately leased by the tenant.

Although the lease ultimately governs the relationship between the landlord and tenant, a leasing transaction involves, among other things, the consideration of important issues prior to receipt of the landlord's form lease. For example, as discussed in **Chapter 1**, tenants must evaluate and anticipate such things as physical space requirements (at initial delivery of space and with respect to future expansion needs) and must evaluate the costs of existing space before reviewing the lease for new space. Tenants must know what it is they want to lease and rely on professional brokers, architects, and designers to evaluate leasing alternatives.

Chapter 2 addresses, among other things, the use of contracts to lease, letters of intent and term sheets as a means of identifying major economic and business issues and setting forth general (if not binding) agreement with respect to those issues. Failure to use letters of intent could lead to situations in which, only after the expenditure of considerable time and money, the landlord and tenant first become aware of a major, and possibly irreconcilable, issue.

Other chapters address important lease transaction issues, some of which are not totally within the "four corners" of the lease. **Chapter 3** (describing the workletter) and **Chapter 4** (dealing with general contractors) address the critical procedures and requirements governing the timely and cost-effective initial construction of tenant improvements. **Chapter 5** discusses the extent to which lease negotiations must anticipate the concerns of the landlord's lender, an important third party in leasing transaction negotiations.

A significant portion of the lease transaction concerns the negotiation of the lease. Accordingly, the remaining chapters contain practical discussions of important and highly negotiated lease clauses. These chapters address topics such as pass through clauses, casualty and insurance clauses, assignment and subletting, and landlord exculpation clauses.

Although forms are included, this book should not be considered a "form book," which typically has many forms and very little analytical discussion and transaction guidance. Forms are used here as an integral part of the text, to illustrate techniques and means to resolve frequently negotiated issues. The entire book, text and forms, will be useful to tenants, and their counsel, as a negotiation guide.

New York, New York
Washington, DC
February 1991

ALAN D. SUGARMAN
JOEL J. GOLDBERG

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Chapter 12 Checklist for Tenants in a Commercial Lease

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