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Uncertain Future: Rethinking the Law Firm Lease Post-COVID-19

Due to COVID-19's impact, the commercial office market should fundamentally shift in favor of tenants for the next several years. Law firm tenants should find an environment characterized by friendly concessions, options across asset classes and price ranges, and limited competition for space.

By **Timothy M. Hazel** and **Gaetan J. Alfano** | March 25, 2021



Timothy Hazel, left, and Gaetan Alfano, right, of Pietragallo Gordon Alfano Bosick & Raspanti. Courtesy photos

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Here are some market factors:

- Global office vacancy will rise from a pre-pandemic rate of 10.9% to 15.6% next year. See, <https://www.cushmanwakefield.com/en/insights/covid-19/global-office-impact-study-and-recovery-timing-report> (<https://www.cushmanwakefield.com/en/insights/covid-19/global-office-impact-study-and-recovery-timing-report>)
- Rents in the United States likely will fall 6.5% this year and 2.3% in 2022. <https://www.bloomberg.com/news/articles/2020-09-23/office-leasing-seen-remaining-below-pre-covid-levels-until-2025> (<https://www.bloomberg.com/news/articles/2020-09-23/office-leasing-seen-remaining-below-pre-covid-levels-until-2025>)
- The length of lease terms has dropped to a five-year low. <https://www.us.jll.com/en/trends-and-insights/research/office-market-statistics-trends> (<https://www.us.jll.com/en/trends-and-insights/research/office-market-statistics-trends>)

So, what does all of this mean to your law office? If you are negotiating a new lease, or renegotiating an existing one, consider including these seven provisions:

- **Contraction Option.** A contraction option is a right to reduce the size of a tenant's leased premises. As office space needs change, the firm may want to reduce square footage. In seeking to reduce your law office footprint, you should be prepared to negotiate the responsibility for the cost to physically redemise the space.
- **Shorter Terms.** Commercial office landlords generally desire longer term leases (typically seven to 10 years) to maximize a building's value for financing purposes. Tenants conversely prefer the inherent flexibility of shorter-term leases. Given the anticipated oversupply for the next several years, you should be poised to negotiate a shorter lease term, while recognizing that a shorter-term lease may impact a landlord's willingness to fund space improvements and to provide other financial incentives, such as an upfront period of free or reduced rent.
- **Option to Terminate Early.** Be prepared to experience a period of trial and error as you attempt to quantify office space needs. Where there is a sizable oversupply of office space, a law firm could become an "office nomad" of sorts and set up shop in less costly space (through a direct lease or sublease) as such space becomes available. To take advantage of office space oversupply, consider negotiating an early termination or escape clause. Such a clause may come at a price as a landlord may insist on a termination fee. This fee typically reflects the landlord's unamortized upfront costs such as brokers' commissions and buildout costs together with some measure of lost rental income.
- **Option to Extend.** An extension option (sometimes also referred to as a renewal option) provides a tenant the option, but not the obligation, to extend or renew a lease beyond the lease's base term. The right to extend or renew a lease, when coupled with a shorter length base term, essentially provides your firm the certainty of a long-term lease without the corresponding inflexibility. Conversely, if changes make the firm's lease impractical, then you have the right to "walk away" from the lease when the base term expires.
- **Right to Use Space Outside of Premises.** As space needs most certainly will evolve, buildings offering flexible as-needed "office hotel space," shared desks, meeting and collaboration spaces, and benching spaces outside of a tenant's leased premises may become more common. You should seek out office properties with this alternative "as needed" space, which can be used by your firm on a gratuitous or fee-based basis. Having such space "in reserve" and available to the firm will provide another layer of flexibility.
- **Limitations on Passthrough Expenses.** Typically, operating expense provisions permit landlords to charge a tenant for a tenant's pro rata share of a very broad range of costs and expenses. Building design and operational changes are inevitable as a result of COVID-19. For instance, landlords may be:

- Reconfiguring building common areas, such as lobbies and elevators to maintain proper social distancing,
- Incorporating technologies to protect people from exposure, including temperature measurement and UV sanitizing devices,
- Upgrading heating, ventilating and cooling systems to improve air filtration, and
- Increasing building service staff such as day porters to disinfect areas throughout a workday.

These measures are costly. Does your firm's lease include an operating expense provision and if so, will the landlord's COVID-related operational expenses be passed through to the firm? You should scrutinize the operating expense provision in your lease to determine the extent of your responsibility to pay for any increased operating costs that may be associated with COVID.

- **Force Majeure Abatements.** Finally, although the lease negotiation equivalent of successfully recovering an onside kick, you should attempt to include language in your lease that defines government-mandated shutdowns due to pandemics as force majeure events, which in turn, would trigger an abatement of the firm's obligation to pay rent during this period. This provision, if successfully negotiated, may prove critical in the unfortunate event of a new outbreak.

Conclusion

As someone much smarter than the authors—Einstein—once said, “in the middle of difficulty, lies an opportunity.” You should take advantage of market conditions and embrace the opportunity to rethink your lease needs, pursue tenant-friendly options and increase your flexibility to deal with a potentially uncertain future.

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