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Before You Sign That Lease...

by MARISA MANLEY

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Landlords are protecting their interests. Are you protecting yours?

Before You Sign That Lease...

by MARISA MANLEY

Office space rental is often a big expense for a small company. But it can be unnecessarily expensive if you don't understand the hidden costs and restrictions that are buried in many leases.

The first thing to understand is that when you negotiate an office lease, your landlord probably has the advantage. If you're like most tenants, you negotiate a lease once every five or ten years and you put rent into the same category as other routine, current business expenses, weighing the monthly payment versus your cash flow.

The landlord is in a different position. Its business is leasing space, and buildings are its major asset. The landlord is highly motivated to plan for the long term and to write conservative leases that maximize the return on their assets. A good real estate lawyer can help protect your interests, but often isn't equipped to advise on business points. Legally acceptable arrangements can be bad business deals.

Fortunately, if you're savvy and reserve certain rights, you can turn an office lease into a tremendous asset. Here are some of the more obscure lease provisions that protect landlords at their tenants' expense.

The space

Office space priced per "rentable" square foot often turns out to be much more expensive than tenants expect because landlords may include space that tenants consider unusable. Normally, you'll be able to use only 75% to 90% of what you pay for. This difference, the loss factor, depends on three things: the physical configuration of your offices, your landlord's method of measuring rentable area, and, increasingly, your landlord's whim.

Rentable area is sure to include a portion of elevators, janitors' closets, lobbies, stairways, and more. Fair enough. Be aware, however, that some buildings have a higher loss factor than others. Fancy curves or sharp angles, elevator banks placed in the center of the building instead of on the side, and an abundance of columns in your space contribute to a higher loss factor.

In addition, landlords often develop their own methods for measuring rentable area. A landlord may measure from the outside of one exterior wall to another, for example, and include questionably "public" areas like air shafts. Some buildings seem to be measured from gargoyle to gargoyle – facade ornaments unrelated to a tenant's usable space.

Beyond this, many landlords create an arbitrary loss factor. Once they've determined how big a space is, they just inflate the number by, say, 25% and then call that the rentable area.

To protect yourself, you might hire an architect to measure the space you plan to lease and tell you whether the usable area will satisfy your business' needs. The architect should use a generally accepted standard, like that adopted by the Building Owners and Managers Association, so you can precisely compare one space with another. Then, whatever number the landlord uses, you'll know how much you'll be paying per usable square foot, and you'll have a more informed basis for negotiation.

On lease renewal, the tenant may also find that the landlord has "remeasured" the space and now claims it's much larger. A well-known Manhattan landlord told a tenant I know that the tenant's space had grown 20%. It also demanded a higher rent per square foot – a double blow.

Operating expenses – the trickiest clause

An operating expense clause lets your landlord recover normal out-of-pocket costs of running a building. That should be all it does. Operating expenses listed in your bill should correspond directly to benefits you gain under the lease, and they ought to meet an objective standard such as GAAP (generally accepted accounting principles), not conventions particular to your landlord.

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Insist on a precise and limited definition of the items to be included. Landlords sometimes use the operating expense clause as a profit center. If you approve a catchall clause, which many landlords argue is necessary, it can become a blank check. You may be billed for charges that have little to do with running a building. Ambiguity also increases your risk of litigation.

Exclusions. Certain items should be specifically excluded from operating expenses: electricity that serves tenants' spaces (the landlord recovers this from each tenant individually); executive salaries; consulting fees; market study fees; commissions and advertising costs; initial landscaping costs; structural repairs or replacements; penalties incurred because the landlord fails to pay taxes on time; fees and higher interest charges caused by the landlord's refinancing of the property; money the landlord must pay if it defaults under a lease or other agreement; any legal fees to resolve disputes involving the landlord; any excessive amount the landlord pays a contractor or vendor because of a special relationship.

Capital improvements. Capital expenditures require particular attention when you're negotiating a lease. The operating expense clause should exclude them generally from the operating expenses for which you are billed.

Barclays Bank in New York got a repair bill after its landlord, Panel Realty Company, installed a new air-conditioning system. Barclays refused to pay, and the case ended up in court. Barclays' lease required the landlord to make all structural repairs. The bank was responsible for its share of all other building maintenance and repairs, including repairs to the air-conditioning system. The court reasoned that replacing the system goes beyond traditional notions of repair. This was a capital expenditure that Panel Realty couldn't pass on to Barclays. While the bank won, it had taken needless risk because its lease didn't make the landlord responsible for capital expenditures.[1]

Even with an exclusion, substantial capital expenditures – artfully relabeled – can find their way into your operating expense bill if you're not careful. For instance, a lease may require you to pay for equipment rentals. This is a common technique for converting capital expenditures into expenses that are passed on to the tenant. You should agree to pay for equipment rentals only if they're not a substitute for capital equipment the landlord would otherwise have to buy. Tenants should be on the lookout for charges like this because the 1986 Tax Reform Act changed depreciation provisions in the tax law and made equipment leasing more attractive to landlords than buying.

Certain capital improvements, like new, more efficient elevators or a new HVAC system, are supposed to reduce the cost of running the building and thus your portion of operating expenses. Such capital expenditures normally are not included in operating expenses. Landlords often insist, however, that you absorb a portion of the cost. Ask for some demonstration that in fact these capital expenditures will reduce operating expenses. Then if you agree to a lease that allows your landlord to bill you for the annual amortization of these items, make sure your portion is limited to the savings that you realize in a particular year. In other words, your net operating expense should be no higher than it was before the cost-saving installation.

Double dipping. The landlord's costs of running separate income-producing parts of the building should be rolled into operating expenses only after the income is deducted from your operating expenses. This goes for sundry shops, coffee shops, observation decks, and so on. If the building has a garage, your landlord probably charges tenants and the public for parking spaces, but the cost of operating the parking garage may also be included among your operating expenses. If your lease doesn't specifically exclude this cost, your landlord has a good argument for billing you.

Electricity. For many tenants, electricity is one of the biggest operating expenses. Landlords that want to augment their revenues without quoting a higher rent often use the electricity clause as a profit center, inflating the already substantial cost for this essential service. Don't let your landlord's profit unnecessarily increase your utility bills. Typically, leases provide that electricity will be paid for in one of three ways: direct metering, submetering, or rent inclusion.

> Operating expenses can become the landlord's blank check.

Direct metering is straightforward and may be the cheapest for you. When the utility directly meters your electricity, you pay the actual charge for what you use. There's no question of intervening profit for the landlord.

When only one meter in the building connects to the utility, you or your landlord may install a separate meter to measure the electricity you use. Your landlord pays the utility, and you pay the landlord. This method, called submetering, can give you cheaper electricity, provided you know what to ask for. If your landlord can buy electricity at low bulk rates, you should bargain for the benefit of that lower rate. Leases often say the tenant will be billed "in accordance with" a utility's published rate schedule. This may mean the landlord will charge you the highest rate that would apply to your own consumption and pocket the difference.

If a building has only one meter, your electric charges may simply be lumped in with your rent. This method is the riskiest for tenants. The landlord usually estimates your electricity usage by looking at your office equipment and asking how many hours you use each piece in a

1. Panel Realty Company v. Barclays Bank, PLC, 130 A2d 427 (N.Y. 1987).

typical day or week. Such estimates are inherently less certain than measuring the amount of electricity you use; on one Manhattan block, the basic rate landlords charge for electricity varies more than 30%.

Be wary of such estimates for another reason. They may include a substantial "safety factor" that needlessly increases your costs. For instance, suppose your landlord pays $2.25 per square foot for electricity but adds $2.75 a square foot to your basic rent. A 10% rate increase would raise your charges to $3.02, and your landlord's profit would grow from 50¢ to 55¢ per square foot. If your office were 10,000 square feet, that extra 5¢ alone would cost you $5,000 over a ten-year lease term. Your landlord's profit on your electricity bill: $55,000. And that's assuming no further increases.

> One landlord used a bookkeeping change to raise Avon's rent by $13.5 million.

Can the landlord cut off your electricity? Leases used throughout the country often allow a landlord to do it on short notice–leaving a tenant to deal directly with a utility. Making your own arrangements for electricity can be expensive and time-consuming. It may require much interior work–like new risers, conduits, and wiring–which, incidentally, your lease may not give you the right to install. Landlords have used such clauses to gain leverage when dealing with unrelated matters.

Rent increases

Base year. Office tenants are generally responsible for increased building expenses and real estate taxes over some base point–either a base year or an expense stop. These escalations can easily outstrip the base rent, and courts will generally enforce the provisions in a lease you sign regardless of how much your rent may increase. So it's important to understand the mechanics of escalation formulas.

The base year is generally the first 12 months you occupy your space. The expense "stop" is a number representing average, reasonable operating expenses per square foot during those first 12 months. Because it is the lease's reference point, if you agree to an early base year or an expense stop that's too low, your landlord will get higher profits every year of your lease. Landlords sometimes argue that the base year should be the 12 months preceding occupancy, but that would mean you'd face a rent increase the day you move in.

If your building has been functioning for a while, the previous 12 months' operating expenses are a good basis for estimating the expense stop. Check the estimate with management companies that handle similar buildings to see whether your stop is within the normal range. The experience of comparable buildings is also a good source if your building is new or if for some reason you don't have access to its expense history.

Fair share. Rent escalation formulas, whether tied to direct operating expenses or to indexes (see next section), should limit the tenant's obligation to pay a fair share of a building's total costs. Usually this means you'll be responsible for expenses in proportion to how much of the building you lease.

Watch out. Some leases make the building's "rented" area rather than "rentable" area the denominator in the fraction. This means that you, not the landlord, would pay operating expenses for the building's vacant areas. If your landlord adds floors or converts storage or basement space to office space (thereby adding to the rentable area), the fraction used to determine your share of the building's expenses should reflect this.

And be alert for clauses that don't clearly spell out how the landlord will calculate your share of the building's area. In one case involving a ground-floor tenant whose lease did not contain a formula, a Pennsylvania court decided that the tenant should pay escalations in the same proportion as its rent to the total rent roll.[2] A bad deal for the tenant. Ground-floor space is often more than double the cost per square foot of office space on upper floors.

Indexing the rent. As an alternative to a complex operating expense clause, some landlords index their rents. This lets landlords keep their books private. It also saves tenants from a costly, time-consuming review of expenses that may produce legitimate disagreement.

But be wary. There are a variety of indexes, with many subtle variations in common use, and their behavior can vary substantially. It's surprisingly common for even large, sophisticated companies to be hit by higher rent escalations than they anticipated. In 1969, for instance, Avon Products signed a 27-year lease for nearly half of a 50-story tower in Manhattan. Avon's rent increases were tied to the "porter's wage"–hourly wage and fringe benefit hikes that certain employees receive under a union contract. Because the contract calculated fringe benefits on a weekly or yearly basis, Avon's landlord, Sheldon Solow, had to translate these fringe benefits into an hourly rate.

For ten years, Solow assumed for the purpose of his calculations that the union employees worked a 40-hour week. But in 1980, Solow notified Avon he was revising his calculations to base them on the actual hours employees worked–31 hours a week. The effect on Avon was dramatic: its rent would jump $780,000 a year, more than $13.5 million over the remaining life of the lease. In 1981, Avon sued Solow over the increase but the case was tossed out. The judge ruled that the lease required the parties to settle by arbitration. Since then, they have been fighting procedural skirmishes. Seven years after the litigation began, Avon has paid substantial legal fees but still doesn't know its actual rent.[3]

To avoid this predicament, always include a sample calculation in your

2. Pittsburgh Allied Fabricators, Inc. v. Habec, 271 A2d 217 (Penn. 1970).
3. Avon Products, Inc. v. Sheldon H. Solow dba Solow Building Company, 435 NYS2d 728 (1981).

lease and make sure you understand the implications of any index proposed as the basis for figuring your escalations.

The most common escalation formulas link rent increases to the Consumer Price Index. The CPI measures the cost of food, clothing, recreation, residential rents, and other goods and services, but has no component relating to commercial rents. The components of an index like this may increase far more than the general inflation rate or the cost of running a building.

The CPI-W, a national index, covers only urban wage earners and clerical workers. The CPI-U covers all urban consumers. The CPI-U is generally favored as an index for rent escalation because it covers about twice as many people and is less volatile.

If your city is one of the 28 covered by a metropolitan CPI, your landlord may propose linking your rent to that rather than to the more general CPI-U. But the metropolitan CPIs are much more volatile and, depending on the local economy, may fluctuate in ways entirely unrelated to the cost of running a building.

Another common gauge, the Producer Price Index, is also highly volatile. It measures changes in large quantities of certain commodities at the wholesale level. During the 1970s, when metals and petroleum products made the index rise dramatically, landlords benefited from the index. One group of Florida tenants sued their landlord, claiming that the use of this index was unconscionable. The court turned them away.[4]

Overlapping escalation formulas. If your landlord indexes base rent in addition to passing through certain operating expenses like fuel, electricity, and real estate taxes, you should negotiate for a partial CPI or porter's wage formula. Otherwise, you'll pay twice for those increases.

Real estate taxes

In general, real estate taxes are the landlord's legal responsibility; you become liable only for the taxes you specifically agree to pay. Like the operating expense clause, however, a real estate tax clause can be used as a catchall to cover additional charges.

Limit your obligation to real estate taxes or taxes a community may impose instead of real estate taxes. Your lease should protect you from paying a landlord's income taxes, corporate taxes, taxes on rents and gross receipts, inheritance taxes, capital gains taxes, and payroll taxes. Be careful about language that tries to make you responsible for undefined taxes that a government authority might impose some time. One tenant who failed to do this many years ago wound up paying its landlord's income taxes after the Sixteenth Amendment initiated them.[5]

Check special assessments to see if they're included with your real estate taxes: charges for new sidewalks, new sewer lines, and so on. Courts have told landlords repeatedly that special assessments aren't real estate taxes. If you're paying assessments as part of your tax bill, you're giving your landlord more than it bargained for.

In some situations, the landlord will contest high taxes in order to enhance the property's value. Make sure your lease entitles you to the benefit of any tax reduction your landlord or other tenants may gain after they've recouped their expenses.

Alterations, maintenance, and repair

Alterations. The alterations-and-improvements clause may give you a false sense of security. It may say that you can make whatever nonstructural changes you like so long as you get your landlord's permission, and that your landlord will be "reasonable." But courts have ruled that things as trivial as lighting fixtures are "structural" components of a building. So a seemingly liberal clause like this could make it impossible for you to move even a single partition.

If you and your landlord disagree about what's structural, it may declare you in default even if you think the changes you've made are reasonable. Consequently, you may be presented with the unpleasant option of paying a big bill at the end of your lease term or restoring so-called structural changes.

So define in the lease what you mean by structural elements. Limit the definitions to components like bearing walls, columns, roof, and facade. And negotiate for the right to make alterations and improvements inside your space, without your landlord's permission, so long as your changes don't affect these few structural elements or the systems that deliver electricity and utilities to other tenants in the building.

> Unless you define "structural" in the lease, you may not be able to move even one partition.

Maintenance. In a typical multitenant office building, the landlord will be responsible for repairing certain listed items–usually structural elements, the exterior, and parts of the building's common areas. You're responsible for maintaining and repairing everything in your space.

What happens when something outside your space has to be repaired and isn't among the items your landlord promised to take care of? You may have to pay for repairs yourself. Either way, you may have no recourse to the landlord, even if the problem makes your space unusable.

Make sure your responsibilities are specified and limited. Your landlord should be obligated to take care of everything you're not.

Casualties. Many leases have clauses allowing the landlord to terminate the lease after a minor casualty affecting the building, even though your office space remains quite usable. This clause gives the landlord an opportunity to force you out in a rising market or force you to

4. Sea Tower Apartments, Inc. v. Century National Bank, 406 So.2d 69 (Fla. 4th Dist. Ct. App. 1981).
5. New York Central Railroad Company v. New York and Harlem Railroad Company et al., 56 NYS2d 712 (1945).

Negotiating the Workletter

The workletter is a separate contract that sets out rights and liabilities for finishing off a building's interior space before you move in. It covers installation of interior walls, fixtures, flooring–all the finishing work–and provides a timetable for completion.

Many landlords propose workletters that recognize two kinds of delay: "tenant-caused delay" and "force majeure," or excusable delay. With tenant delays, you pay, usually by reimbursing the landlord for extra out-of-pocket costs and by paying rent even before you can move into your space. But many landlords, concerned about their expenses, try to make tenants responsible for delays they can't control. Similarly, landlords may penalize tenants for delays that are actually part of the normal back-and-forth required to get everyone to sign off on working drawings or unit prices.

To protect yourself, check the definition of tenant-caused delay. It should cover only those situations you can control. Make sure your workletter includes a realistic schedule for producing and reviewing drawings, bidding out the work, and so on. And make sure you're paying only for delays that affect a project's critical path–the schedule of dates that tells your landlord when each task must be finished so that it doesn't interfere with any other.

In addition, see that your workletter allows you enough time to review design drawings and other documents you must approve. A landlord's delay in delivering the documents shouldn't cut into your allotted time.

Force majeure, or excusable delay, is supposed to cover events the landlord can't control–flood, strikes, hurricane. Be sure that it applies only to those few situations the landlord can't reasonably be held responsible for. Otherwise, this becomes a catchall that excuses your landlord from managing the work you've hired it to do.

Your remedy if there's an excusable delay? Landlords normally propose that no matter how long the delay, or how much it costs you to make alternative arrangements, you can't break the contract. You can only push back the date you start paying rent. In other words, you have to wait around. But you need assurance that your business will continue with minimal interruption. Protect yourself with a specific walk date. Except for delays you cause, if your space isn't ready after a reasonable time, you should have the right to terminate your lease and go elsewhere–without having to pay rent on two leases.

Interiors allowance and fit-up. With or without a workletter, tenants often get an interiors allowance for the initial fit-up work: landlords provide a credit of so many dollars per square foot or they provide certain standard items like electrical outlets, doors, latchsets, lighting fixtures, plasterboard, and carpet.

Most tenants prefer better quality or simply need something other than the building standard–but, unless you negotiate it, your lease may permit no credit for items you don't want.

The tenant portion of fit-up can quickly reach $40 to $50 a foot for interiors that aren't lavish. So refuse a clause that obliges you to use resident contractors because you'll likely get a better price by bidding out work to general contractors.

Make sure you understand precisely how the lease distinguishes between "base building," which the landlord pays for, and your premises, which you pay for. Otherwise, you may find you're obligated to pay for expensive wiring, duct work, etc., you hadn't planned on.

renegotiate unrelated parts of your lease before it will agree to restore the damage.

Make sure your landlord is obligated to restore the building and your space after a casualty if the work can be done in a reasonable time. You should be able to walk if the damage is so severe that your space can't be restored at all or within a time that's reasonable, given your business' needs. Without this right, you could be forced to pay rent even though you have no more office space.

A doctor in Suffolk County, New York signed an eight-year lease for office space. Less than a year later, the building burned down. The landlord sued to keep collecting rent and won, even though he had no obligation to repair the building. New York law would have protected the doctor against this kind of thing, but the lease contained a clause providing that rent wouldn't abate and that his responsibility under the lease would continue even if a casualty destroyed the building. In effect, the doctor signed away his legal rights.[6]

Wear and tear. Your lease should at least stipulate that you're not responsible for repairing normal wear and tear. Some landlords require tenants to "restore" their leased space when they leave. You shouldn't agree to such an arrangement. Since almost every tenant has needs that require modification of the space, restoring the space would cost you a lot without substantial benefit to the landlord. Chances are good that much of the restored carpeting, partitions, and so on will be torn out to modify space for the next tenant who comes along.

Escapes and extensions

An assignment is the transfer to a third party of all rights and interests the tenant holds under a lease. In a sublease, the transfer usually covers a portion of the leased space or the entire property for a period shorter than the lease term. If your lease says nothing about subleasing or assignments, you're free to do either. Most landlords, however, are acutely

6. José Rodriguez et al. v. Alan Nachamie, 359 NYS2d 51 (1977).

aware of the profit potential this would give you. Usually they're also concerned about controlling the character and quality of tenants in their buildings. Often the landlord's lease flatly prohibits a tenant from assigning or subleasing its space. In a variation that is little better, a landlord will permit subleasing only with their consent, and they'll agree to be "reasonable."

Subleasing. Flexibility could be crucial to your company in a changing and competitive business environment. Unless you have a tiny space or short lease-term, negotiate for the right to sublease part of your space without the landlord's approval. This allows you to warehouse unneeded space but gives you the option of easily regaining it from your subtenant.

If your lease requires the landlord's consent before subleasing and says the landlord must be "reasonable," define what this means. Prospective subtenants probably won't wait while you wrangle with the landlord over the terms under which you can sublease. The landlord's rejection of prospective subtenants should be for limited, objective reasons, like financial inability to handle lease payments or bad reputation. Also limit the landlord's time to decide on any proposed subtenant. A "yes" that comes too late will cost you a subtenant as surely as a "no."

Whether you're required to turn over 100% of sublease profits or only a portion, define sublease profits to make sure your expenses are covered. You should be able to deduct from rents you receive any expenses like advertising, the cost of negotiating and drafting the lease, and concessions like free rent, carpeting and painting, as well as the unamortized cost of your own improvements in the subleased space. Negotiate, too, to deduct rent you pay while your space sits vacant as you try to sublease it. Agree to pay your landlord only when and if you're paid. If your subtenant defaults, leaving you without a promised income stream, you don't want to be obligated to pay illusory profit to your landlord.

Some landlords will insist on the right to take back space you want to sublease. This allows a landlord to regain space in a rising market and rent it out itself, perhaps negotiating a longer term with another tenant. If your lease contains a clause like this, make sure the landlord is limited to taking back only the space you want to sublease for the time you want to sublease it.

Assignment. Be especially wary of leases that flatly prohibit assignments or give your landlord unfettered discretion to prohibit one. In many cases, a merger or acquisition will result in an assignment because your lease is transferred to a new legal entity. This means you'd be in default and could be forced out—especially in a rising market. The landlord also may try to impose capitalization requirements on an assignee, demanding, for example, that any potential merger partner have assets at least equal to yours.

> If you sublease, agree to pay your landlord only after you're paid.

Yet in a merger you may not be in control. Similarly, your landlord may require that any subsidiary to whom you assign your lease have assets as solid as yours. But subsidiaries are seldom as well endowed as their parent companies. A clause like this seriously hampers your business flexibility, especially if your landlord requires you to remain primarily liable even after you assign the lease, and gives the landlord little more protection.

Make sure you can assign to any subsidiary or affiliate as long as you own at least 33⅓%; you're safest to negotiate a deal with no capitalization restrictions on companies with which you may merge. If you think you may be acquired, preserve your flexibility by retaining the right to assign the lease to any acquiring company that meets certain capitalization requirements, for example, that it have a net worth at least equal to yours at the date of acquisition.

Renewals. An extension option can be valuable. Economics aside, it ensures that you can continue operating your business, uninterrupted, at the same location for more than a short three, five, or ten years. If you agree to a fixed rent during the renewal term, both you and the landlord are gambling on a future market. For that reason, leases frequently include a formula—usually tied to the fair market rate—to determine rent during the extended term.

The fair market rate depends on many individual considerations, like a tenant's credit rating (for instance, IBM will probably get a discount over a two-year-old startup because the landlord's risk is lower), the formula for calculating operating expenses, and the lease term. If you agree to a fair market value renewal option, specify factors that would be especially important in your case. Moreover, insist that the space be valued for use as office space, even if that's not its "highest and best use" at renewal time.

Quite a few leases don't require the landlord to commit to the renewal term rental rate until after the term has started. Though the mechanism for determining the renewal rate may be clear, it's unlikely you'll want to commit to pay for space unless you know the cost in advance. Make sure your landlord specifies a firm rate far enough in advance to permit you to shop for alternatives. Otherwise, you give up leverage that could help ensure you a fair renewal rate. An ambiguous arrangement has another hidden cost if you do decide to move: you may have to pay steep holdover rates—1½ to 2 times the normal rent while you shop for new quarters.

Whatever you do, specify the essential terms of your extension option. Don't postpone the decision with a vague lease clause that "agrees to agree." This invites costly litigation and could leave you with no office space.

Dispute resolution

Leases often include a clause saying that in a dispute over such items as operating costs, electricity, and

real estate taxes, the tenant must pay but can take the landlord to court. This is a bad deal for you. It gives you nothing you didn't already have, and the landlord has no incentive to settle. Time-consuming and costly litigation may leave you without an answer for years. Meanwhile, the landlord has your money even if the court eventually finds it wrong and orders repayment.

Provide for dispute resolution in the lease. Here are a few guiding principles:

■ Arbitration may be the best method to resolve disputes like disagreement over the fair market rent or whether a tenant's use of space has caused more damage than normal wear and tear. Real estate experts are more qualified than the lay public to say who's right.

■ In certain disputes the tenant should have the right to withhold operating expenses – for instance, if the landlord fails to provide essential utilities or repair services.

■ The tenant should have convenient access to documentation supporting the landlord's bills and should be given reasonable time to audit the operating expenses. An independent CPA, not the landlord's nephew, should prepare the statement.

■ The landlord should share certain audit costs with the tenant.

■ If it prevails in a dispute, the tenant should get a prompt refund with interest, plus reimbursement for out-of-pocket expenses and attorneys' fees.

An obvious but essential reminder: once you agree on a way to resolve disputes, follow the procedure to the letter. Paine, Webber, Jackson & Curtis, Inc. (the financial services company that was PaineWebber's predecessor) took its landlord to court over a dispute about operating expenses, but the case was tossed out by a judge without even a hearing. The company had neglected to start the proceeding within 30 days, as the lease required.[7]

7. Silverstein Properties, Inc. v. Paine, Webber, Jackson & Curtis, Inc., 480 NYS2d 724 (1984).

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