



# Negotiating Lease Clauses to Mitigate Risk and Make a Financial Executive's Life Easier!!

Presented by:  
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## Guiding Principles of Session

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- Practical!
- Mostly tactical/some strategy
- Address a variety of situations that a Financial Executive comes across

### **GOAL**

- Add value and mitigate risk



## Measurement of Your Space Did your Space Grow?

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### Gross Up Factors

Early 90's	10% to 12%
Now	15% to 18%

**WHY?**

# Measurement of Your Space The BOMA Standard

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The Standard – **B**uilding **O**wners and **M**anagers **A**ssociation

1980 – Most tenant friendly – rarely used

1996 – Most common

2010 – New standard – most landlord friendly

Include in your lease negotiations:

*“Landlord cannot re-measure and adjust premises’ square footage during initial term or any extensions....”*



## Additional Rent Operating Costs, Realty Taxes and Utilities

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A well negotiated lease usually includes a Right to Audit and a thorough list of operating cost exclusions...but, what happens when you receive your reconciliation statement?

1. Usually audited statements are audited to the building not the lease. Must address during offer stage.
2. How do you know if there is a mistake? a) Use figures for comparable buildings; b) Compare to previous years (2 to 3 percent).



## Additional Rent Maintenance Fees

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New Trend → Charges are allocated to specific tenant requests and/or maintenance issues.

- Make sure you have option to self maintain within your premises i.e. light bulbs, etc.
- Clearly define that you can contract directly with building services providers without mark-up



## Tenant's Work/Improvements Supervision Fees

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Generally, supervision fees are acceptable, however:

1. As part of the negotiation process, most supervision fees for initial construction can be waived and/or capped i.e. actual costs to \$0.80 psf.
2. When base building consultants are used, there should be no supervision fee.
3. Base building consultants and approved contractors/trades should have an obligation to provide services at market competitive fees. This is difficult to measure → need to have provision in lease for 3 or more providers in each trade or category.



## Tenant's Work/Improvements Landlord's Work Schedule

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Three common mistakes:

1. Previous tenant's IT infrastructure not addressed i.e. cleared out or labeled.
2. HVAC servicing the premises is in good working order but controls within premises not addressed i.e. thermostats, VAV boxes.
3. Ensuring a base line HVAC standard i.e. ASHRAE/ distributed to an open plan.





## Tenant's Work/Improvements Restoration

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*"The Tenant shall not be responsible, financially or otherwise, for bringing the Premises back to Base Building condition at the expiry of the Term or any renewal thereof. Upon expiry or earlier termination of the Lease the Tenant shall leave the Premises in vacant "broom swept" condition."*

Key elements:

- "Financially or otherwise"
- If you do have a restoration obligation, then control the process
- Provision to complete restoration after lease expiry



## Right to Renew Strategic Timing

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In the absence of unique operational drivers, revolve your timeline around your extension notice date.

### Why?

- Preserve your extension right as a last resort/defensive move
- Don't plan on exercising your right to extend
- Time/process to create maximum leverage possible



## Right to Renew Other Considerations

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1. Is there a difference between renewal and extension?
2. Protect the right to renew (and other rights) when expanding or downsizing. Look at “required conditions”.
3. Make sure you have an arbitration clause.
4. Push for multiple terms and try for “up to five (5) years”.



## Assignment and Sublet Landlord Restrictions to Address

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1. Cannot Sublease to Existing Tenants
  - Try to delete
  - Put stipulations regarding quality of space and/or rate
2. Cannot Profit
  - Try to split profit 50/50
  - Recoup costs such as construction costs, real estate fees, legal, free rent, etc.
3. Landlord's Right to Terminate
  - Only applicable to portion of premises to be sublet or assigned



## Estoppel Certificates

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*"This does not constitute a Lease  
Amending Agreement"*



Q&A

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*Thank you*  
*Scott Mulligan*