



Real Estate Journal

THE LARGEST WEEKLY COMMERCIAL/INVESTMENT NEWSPAPER IN THE WORLD

Exit strategies

In a difficult economy, commercial tenants want to know what exit strategies exist under a commercial lease. The following are some exit strategies:

Lease termination date

Tenants may ask for and obtain a right to terminate the lease on a certain date. Such a termination privilege will require notice to the landlord and may require a payment to the landlord such as the unamortized cost of the build-out which landlord provided for the tenant's premises.

In a weak market, a tenant may be able to negotiate for a termination privilege without any termination payment.

Subleasing and assignment

Tenant will attempt to have a broad right to sublease and to assign. The customary language provides for the tenant to have the right to sublease and assign only with landlord's prior consent. Landlords are usually willing to say that "the consent of landlord will not be unreasonably withheld, conditioned or delayed." However, landlords may want a right to recapture the leased premises instead of assenting to a sublease or assignment and may insist upon the right to object to a sublease or an assignment "for any reason or for no reason."

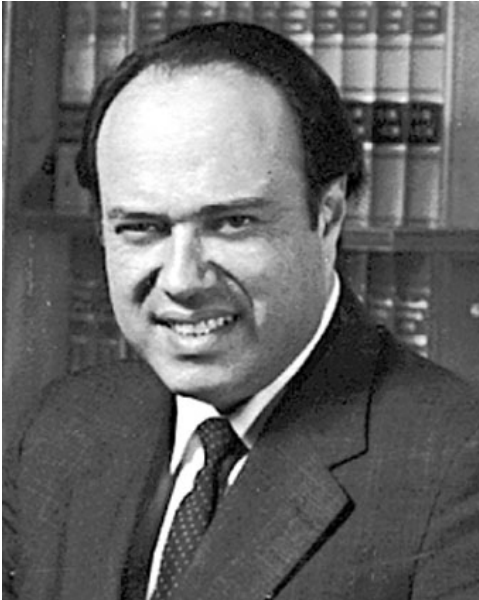
Option to contract

The tenant may negotiate the right to surrender a portion of the space with a proportionate reduction in rent.

Option to extend the term

Instead of a longer lease term (e.g., six years), a tenant may negotiate a shorter term (e.g., three years) with an option to extend for three years provided the tenant gives a certain notice and is not in default under the lease. The difficult part of an option to extend is the determination of rent during the extended term. This could be set at the commencement of the initial term or it could be determined by some appraisal mechanism. In any event, the lease should protect the landlord by not allowing the rent during the option period to be less than the rent during the last year of the initial term of the lease.

Saul Feldman is a real estate attorney with Feldman & Feldman, PC in Boston, Mass.



Saul Feldman