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Landlords and tenants rest easy as result of CAM audits

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The building your company leases needs a new roof. Or the shopping center where you're located recently upgraded its landscaping. Or perhaps there was a record amount of snow this winter, requiring an unexpected amount of snow plowing.

Each one of these scenarios would potentially result in an increase in the common area maintenance expenses that you pay as a tenant according to the terms of your lease. How do you know that you're being charged the right amount? You can ask for an audit of the common area maintenance expenses.

The right to request such audits is typically included in the terms of most commercial lease agreements. The audits are designed to make sure that all expenses charged to the tenant are reasonable and appropriate. Usually the process simply confirms the bill, providing peace of mind to both tenant and landlord. But sometimes there can be problems.

Avoid Inappropriate Costs

Down the Road

The first step in protecting yourself from unwanted charges is to make sure common area expenses are specifically negotiated before signing the lease. That means addressing up front such issues as defining the common area, detailing the share of capital improvements to be borne by the tenant, and perhaps creating a list of expenses to be specifically excluded. If the lease is not for the entire building and the remaining rentable portion of the building is vacant, are there certain "gross-up" provisions that need to be negotiated? The lease should also specify the manner of calculating the tenant's share of expenses and include the right for a tenant to request an audit. An audit is not an inexpensive undertaking, and larger properties will frequently include a provision requiring that the landlord provide a CAM audit every year. In other cases, a lease may provide that the tenant has the right to request an audit, at its cost, unless errors of a certain magnitude are found. Generally, if significant overcharges are found in the audit the landlord then becomes responsible for paying for the audit work.

If a landlord, for example, manages multiple properties, services such as landscaping might not be apportioned appropriately between the various properties. Or perhaps heating system improvements "specifically exempted in the terms of your lease" appear to be included in your annual bill. The only way to know for sure if the bill is correct is to have an audit conducted.

Take Notice of Outliers

Audit requests most commonly come from large tenants who have multiple leases in a variety of places across the country. A national women's clothing retailer, for example, might ask for an audit if common area expenses are running higher on a per-square-foot basis compared with other stores in

similar parts of the country. Or perhaps a company located in a half dozen different cities sees big expense increases at one particular site. These companies typically have leasing departments with people actively managing these expenses.

The best practice is to review common area expenses, flagging any big increases in the bill or unexpected cost items. Sometimes these concerns can be addressed by simply requesting a more detailed accounting of the bill. If questions still remain, the easiest way to resolve the matter is exercising the lease provision that allows the tenant to request a common area expense audit.

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