



nerrej

Commercial tenants in this real estate market

July 30, 2008 - Front Section

In a difficult real estate market, commercial tenants (both office and retail) attempt to negotiate more favorable leases with their landlords.

The lease negotiation process is very difficult in a troubled market. The leverage changes. The tenants have the leverage even if the property is desirable and in a good location. Tenants have more choices including, of course, remaining in their existing space and negotiating a better lease with their present landlord.

The negotiations are not only for lower rents and several months of free rent.

The following are also on the table:

- (1) No personal guarantees
- (2) Mutual indemnifications
- (3) A more extensive build-out of the space. Work letters become more difficult to get executed.
- (4) Options to extend the term on more favorable terms. Tenants become more aware of the need for clarity regarding the rent and additional rent during the option periods.
- (5) More favorable tax and operating escalation provisions including a cap or caps on the amounts to be paid. Tenants want more comprehensive audit rights to verify the charges for tax and operating charges.
- (6) Smaller security deposits, no security deposits, or use of a letter of credit for a smaller amount. Tenants will insist on stiff penalties against a landlord who fails to deliver the leased premises by the Term Commencement Date.

Landlords have to be ready for tenants who will take advantage of the difficult real estate climate.

Landlords also have to be ready to deal with Trustees in bankruptcy in the event a tenant files for bankruptcy. As a personal guaranty will survive the bankruptcy of a corporate tenant, personal guarantees become more important in a troubled market.

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

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540