



nerej

Rental reduction solutions for cash strapped tenants

November 06, 2008 - Connecticut

Are you or your clients being hammered by the financial crisis? Has business contracted? Do you need to downsize your space or reduce your overhead? One option to consider is reducing your space or restructuring your rental obligation. It is not an easy fix, but if you do your homework and have enough options to work with, it is possible. Consider the following:

1. First, Do Your Homework. Review your lease. You are looking for rights, outs, landlord defaults, anything. This is all about seeing what leverage you have to work with. Experience teaches that a slow read of a complex lease may produce a powerhouse list of options. Also, consider what the market conditions are surrounding your space and how that might impact the negotiation? Is this an easy assignment or sublet situation? If you go under, will the landlord have dead space for a long time to come? Do you have a guaranty sitting out there? Does your company have significant assets at risk under the lease or are you looking more like the Titanic?
2. Hard Ball. If recourse under the lease is to minimal assets, the conversation is short and simple. We are walking or going under if you don't give us this concession - NOW. If the landlord has no other options, you may be signing a rental reduction agreement within moments. This solution, however, does not fit most situations. There are other more landlord attractive solutions to consider if Hard Ball is not an option.
3. Straight Reduction Using Reality Therapy. Landlord, we are in trouble. Here are our books. No hiding here. Give us a reduction with no hooks and we are likely to live on and be a great tenant. Refuse and we are likely to not be around this time next year. Your choice.
4. Extend the Term Now. Landlords are looking for long term stabilized rental streams. Offer it now. Extension for a rent reduction. Show the landlord how this will stabilize your business situation for the long term. Consider offering a covenant providing landlord with future financial information on the company. This makes lenders happy.
5. Reduce Rent Now, Increase Rent Later. Reduce the rental now in exchange for an increased rental rate later, perhaps with an interest accrual component baked into the new increased rent. The rental bump later will put the landlord in the same position as the level rent previously agreed to. This becomes a time value of money issue for the landlord rather than an economic issue, and the timing is mitigated by including interest on the accrual.
6. Accrue Reduction Differential, Balloon it with a Personal Guaranty. Allow the differential between the reduced rent and the stated rent to accrue for a period of time and make it due and payable on a date certain. Offer up a personal guaranty for the accrued and unpaid rent. You can sweeten this offer with collateral to back the personal guaranty and it can be documented with a promissory note from the tenant, a guaranty with some credit behind it, and perhaps a collateral package as further inducement. You can add in an interest accrual as well to mitigate the time value of money concern. Try burning some or all of the accrual off if you keep up your payments.

7. Offer to Improve the Lease. You had the leverage when you negotiated that lease. Your hot shot attorney extracted all kinds of concessions. Go back to those negotiation notes (the landlord has forgotten about them now) and see what you extracted. Put some of those back on the table.

8. Collateralize or Improve the Credit Behind the Lease. Step up to a full or limited guaranty. Start with a guaranty of collection (collects only if tenant does not pay after suit) and back into a full guaranty (can sue either of you). Consider credit enhancements such as a larger deposit either in cash or by letter of credit, but try to burn all of this down over time if you perform or consider an automatic release of the guaranty if you bump the rent stream back up.

9. Assign or Sublet. A clean exit is the best out. If you have to consider supplementing the assignment or sublet rental, it is still cheaper than eating the entire rent. Regardless of how the lease language is phrased, there is a fair amount of case law on the subject of withholding approval to provide guidance on the viability of this option.

10. Buy Out the Lease. Offer to pay the landlord a one time fee to terminate the lease. Pay it in cash if you can or offer to sign a note, collateralize the note, and pay it back over time or in a balloon down the road.

11. Become Educated on Your Legal Options. Get your attorney to explain the eviction procedures in your jurisdiction. Eviction can take time and may allow you to raise defenses. You can fight and then perhaps settle at a later date. In some cases, landlords may have a duty to mitigate their damages (i.e. try to find a new tenant for you). The lease review may reveal defenses to either the lease or the guaranty.

Conclusion: Do your homework before you make the call. Attend the landlord meeting in person. Step into that meeting with a negotiating strategy backed up with as many solutions such as the above as possible. You need a big bag of solutions when you step into this session. Know before you go in where your walk away point is and what your next best alternative is. You negotiate to that point, and you walk away from the table when you hit that point. The tools above are all that can fit in this article space. You can always package them together to create something attractive to the landlord. A brain storming session can produce a host of other solutions as well. It can work. Good luck.

David Glissman is with McDermid Reynolds Glissman, Hartford, Conn.

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