

Retail Real Estate 101

The ins and outs of Real Estate and how it works for your store.

By Duncan McAllister

The process of negotiating a retail lease may be a daunting task fraught with minute details and onerous caveats.

After finding the right space, the retailer may believe that once the term of the lease has been decided and the amount of rent agreed upon, then the signing of the lease document is a mere formality. Nothing could be further from the truth. All the experts agree: do not attempt this at home. Get professional help, regardless of the size of the deal.

With typical lease terms of five to 10 years, a poorly negotiated deal adds risk to the business and inhibits flexibility at a cost to the retailer; conceivably in the hundreds of thousands of dollars over the term of the lease.

It's a well known fact in the industry that the lease tends to favour the landlord. At the same time, the landlord expects certain revisions to the lease document and reasonable change requests from the tenant. It is your ability to negotiate these changes that will determine the usability of the space and the successful operation of the business.

As Ottawa real estate lawyer Luc Bourque points out in *Lawyer's Weekly*, "Commercial real estate leases differ significantly from residential leases. Residential leases are highly regulated. In contrast, commercial leases are very loosely regulated: the rights and obligations of the landlord and tenant are mainly a matter of contract between the parties... Therefore, contacting a Canadian real estate lawyer at an early stage is important."

Outsourcing Your Lease Negotiations

What can you expect a specialist leasing agent or lawyer to do for you?

There are two stages to the leasing process, starting with an Offer to Lease, which lays out most of the essential terms of the

agreement. After all the amendments have been agreed upon, a full lease is then signed. It is the Offer that both sides need to negotiate in order to make the appropriate changes. This is where your leasing specialist comes in.

A good leasing consultant will go through the document and identify any necessary changes for the tenant. They may run through a list of standard questions, effecting numerous changes and then negotiate these changes on behalf of the tenant. They would then assist with the preparation of the final lease document.

Additionally, they may perform strategic consulting work involving risk analysis, valuations and due diligence as well as ongoing administration and auditing of the lease.

Ian Collins is one of the foremost retail lease experts in Canada, with 20 years retail legal experience negotiating leases with every major shopping centre landlord in Canada. A lawyer and developer, Collins operates a successful practice out of offices in Toronto's Manulife Centre.

"There is a real effect on the operation and money impacts beyond basic business terms. There is money to be lost and gained within finalizing the lease document," says Collins, "Serious operational and money issues are involved in that contract. All of them have to be addressed and will have substantial effect on the successful operation of the business"

Any lease that crosses his desk gets a thorough going over. He has many formulations of Use Clauses that gives the tenant a lot of flexibility. Across the board, Collins will identify and successfully negotiate five to 20 changes, depending on the length of the document and the complexity of the deal. His methodology includes the removal of what he calls "landmines": clauses or conditions that severely handicap the operation of the retail business.