

DON'T BREAK YOUR LEASE JUST YET

SIX THINGS TO CONSIDER IF YOU'RE STRUGGLING TO MAKE RENT...

BY PATRICK SCANLON & JOHN COLAN

Right now you may be thinking about breaking your lease, tempted by the huge cost savings from eliminating one of the biggest line items in your budget. We get it. But it could be the costliest mistake you can make, especially when cooperation is far more profitable. There's a much better strategy.

HERE IS WHAT WE RECOMMEND (AND A FEW ADDITIONAL THINGS TO CONSIDER):

1. YOU HAVE LEVERAGE - USE IT

Uncertainty and fear of economic depression have shifted negotiating power in favor of tenants. More so than ever, landlords are desperate to preserve cash flow and projected revenue; tenants can use this increased leverage to renegotiate leases, cut costs under the current agreement, or even negotiate a new lease, depending on term remaining. Whichever document is subject of the negotiations, tenants are in the best position in recent history to demand a favorable deal.

Let us, or someone like us, initiate a dialogue with your landlord. Be straightforward, forthcoming and realistic with your broker about your financial situation. We can use this information to position your company to receive the best possible terms and reduce your liability, but only if we know the whole story.

Once the discussion has begun, we can significantly decrease lease liability in one of two ways: reduce your size or reduce your rate. With respect to rate, trust your broker can get to the lowest possible number. In terms of contraction and resizing, keep in mind all the space you don't use. If it's more complicated than simply losing the billiards room, consider a free consult with a reasonably priced architect. Your broker can point you in the right direction.

2. TIME IS MONEY

Whether the goal is to reduce the size of your space or pay less per foot, or both, you'll only get there if the landlord agrees to it. This will be a negotiation, a give and take, so you must be willing to offer something of value if you expect your landlord to accept your demands. Usually, your most valuable bargaining chip is time, in the form of additional lease term. While you may have grandiose visions of moving your firm to a larger, nicer space when your current lease expires, times have changed. You must be willing to adapt, and an extension may be the wisest move at this time.

TEAM

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3. CUT THE DEAD WEIGHT

You can also save money without a new lease. Examine your existing agreement and look for ways that costs can be reduced. Go over every word in the document, and loop in any pertinent expert (attorney, broker, insurance specialist, CPA, etc.). Good service professionals are happy to spend a little "free" time to assist a client, especially now. And if yours isn't, there are plenty who are.

Use this team to re-evaluate existing contractual considerations of operating costs as well as additional variable commitments such as parking spaces, gym memberships, etc. Then trim the fat - be willing to consider shedding everything that is not absolutely essential to the efficient operation of your business.

4. PAY YOUR RENT IF YOU CAN

Many tenants, some urged by brokers, have taken an aggressive, opportunistic approach with their landlords and used the pandemic as grounds for simply refusing to pay rent. This is not wise. Hostile business tactics at a time when empathy should rule show a lack of character that will not be soon forgotten. A few months of rent is not worth being ostracized from future deals or blackballed from other properties. Further, as with any negotiation, there is a huge human element to discussions about lease terms. Approaching your landlord with an honest appraisal of what you can and can't do will count for a lot and only smooth the path to a favorable deal.

5. IF NOT, ASK FOR HELP

Even the most conservative, oppressive landlords are showing enough compassion - or at least enough PR savvy - to offer some rent relief to struggling tenants. But you have to ask. And be prepared to show financial statements and other evidence of hardship.

Some landlords may abate rent immediately, for 1 or 2 months. Others may consider up to 180 days of rent reduction or deferral, and either amortize those months into the remaining lease term or add those months to the end of the lease. In any of these scenarios, you are far better off having asked the question.

Even in the unlikely scenario where you, your broker and the owner cannot reach an understanding, you may still be able to negotiate a mutually agreeable termination of the lease. If you truly cannot pay - either your rent or a subsequent judgment to enforce the lease - then the owner has no interest in you staying. Even some nominal liquidated damages would put your business in a far better position than if you had walked out, because...

6. COOPERATION IS FAR MORE PROFITABLE

Actions in times of crisis demonstrate character and form your reputation. You do plan to do business again, right? Because unless remote working manages to present a suitable replacement for every client or team interaction, your business will need office space. And it is very likely that today's landlords will be tomorrow's landlords. If you are willing to cooperate while we all sit on this side of the curve, you will reap the rewards many times over once we reach the other side.

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