

Your Termination Option, How Good Is It?

An office lease is a long term commitment, but the real estate needs of your business are subject to change. Armed with foresight and enjoying maximum leverage (because you were still talking with multiple landlords) you had your broker negotiate a right for you to terminate your lease early.

With a termination option in your lease, you're ahead of 90% of tenants. Next time, use this checklist to move ahead of the other 10%.

CHECKLIST FOR NEGOTIATING A RIGHT TO TERMINATE YOUR LEASE EARLY

- ❖ Do you have an ongoing right or the right to terminate the lease at multiple points during/through the lease term? Or is it only a one-time right?
- ❖ How much prior notice in advance of the termination date are you required to provide to the landlord?
- ❖ Is the effective date of termination clearly identified as either a specific date or an exact number of days or months prior to the effective date of termination?
- ❖ Is the minimum amount of advance notice required clearly specified as either a specific date or an exact number of days or months prior to the effective date of termination?
- ❖ Is the lease termination fee limited to unamortized construction allowances, commissions, and concessions? Is the landlord required to substantiate (e.g., provide copies of paid invoices) the costs to be amortized? Are the total costs specified by category in a lease commencement memo?
- ❖ Is the method of amortization and the discount rate, if any, clearly specified? Is the amortization period stated? Are the costs to be fully amortized over a period no longer than the initial lease term?
- ❖ Is there an additional penalty, perhaps equal to some portion of the rent to be lost by the landlord during the estimated releasing period, added to the termination fee? If you have an ongoing right to terminate, does this additional fee decrease as the remaining lease term shortens?
- ❖ If your space has an open, flexible floor-plan conducive to reuse by other tenants, is the lease termination fee lower than it would be if the space has a specialized build-out and thus more difficult to release?
- ❖ Is the termination fee due upon the effective termination date, upon the date you actually vacate the Premises, or upon the exercise of the option, may the fee be paid in installments? Do you receive a credit for any prepaid utilities or taxes against the final fee installment?
- ❖ Is lender consent or ground lessor consent required in order to terminate your lease?

*Need help terminate your lease?
Call Mike for a consultation.*

Mike Maroon, SIOR is the Founding Partner of The Acclaim Group, a leading real estate adviser to corporations locally, nationally and globally.