

Legal Alert: Controlling Costs When Negotiating a Lease: Real Estate Taxes

Lawyers Alliance has been providing legal advice to organizations responding to the Department of Homeless Services Open-Ended RFP that seeks proposals from real estate developers and not-for-profits to provide stand-alone residences for homeless families with children, adult families and single adults. As providers of business transactional legal services to nonprofits, Lawyers Alliance staff and volunteers frequently negotiate lease agreements for homeless services organizations. When a nonprofit rents an entire building, it becomes increasingly important to monitor expenses and to seek the right to terminate the lease in the event there is a loss of funding.

The highest and most volatile costs of renting a building in New York City can be the real estate taxes. Real estate taxes are one of the costs that are passed through to the tenant by the landlord. When a nonprofit leases a building that is owned by a business entity, there is no exemption from real estate taxes based on the charitable use of the building by the nonprofit. Whether a building might be entitled to receive a real estate tax exemption depends on the tax exempt status of the building owner, not the tenant. Therefore, you need to make sure that you know what the real estate taxes are for the premises and in the case of a newly developed building, track the real estate assessment rolls that are released at the beginning of each year. The development of a new building will result in an increase in the real estate taxes. As a practical matter, if you are not familiar with the New York City Department of Finance website, visit the website and check the real property taxes each quarter to make sure you are aware of the real estate taxes and assessments against the property. Each landlord and their proposed form of lease can present unique challenges, but here are some tips about real estate tax pass-throughs that might prove to be helpful when you negotiate and budget for a lease.

1. The lease should contain a provision that requires the landlord to deliver all notices received pertaining to real estate taxes and assessments against the leased premises. This should include notices of tentative and final real estate tax assessments, tax bills and other assessments.
2. Require the landlord to protest the annual real estate tax assessments or negotiate for the right to file protests if the landlord does not agree to protest and include a provision requesting that the landlord cooperate in any protest of the real estate tax assessment.
3. Include a provision that requires the landlord to credit the tenant with any reduction in real estate taxes that may be granted based on such protest.
4. Provide an allowance in your annual budget for real estate tax increases. For advice on how to budget for increases speak with your accountant on the appropriate factor to use when estimating increases over the prior year.

This alert is meant to provide general information only, not legal advice. If you have questions, please contact Hedwig O'Hara at (212) 219-1800 ext. 226 or visit our website at www.lawyersalliance.org for further information.