

Rosenstein Law Offices, P.C.

Commercial Leasing + Building Management

Commercial leasing, building management and related matters are a major focus of the practice of Richard Rosenstein.

- Richard's commercial leasing and building management practice encompasses all aspects of commercial leasing, lease administration and building operation and management. Richard's services include:
 - [lease negotiation and documentation](#),
 - [lease review and analysis of individual leases for tenants and building portfolios for landlords](#),
 - [lease and portfolio administration of individual leases for tenants and building portfolios for landlords](#), and
 - [building management and operating issues representation](#).
- In Richard's commercial leasing practice he works on office, retail and industrial leases, sublease and assignment matters, ground leases, build-to-suit projects and sale and leaseback transactions.
- He represents all of the various parties having a stake in building management and operation and the landlord/ tenant relationship, including landlords, tenants, subtenants, assignees, lenders, brokers, property managers, and contractors.
- During his career Richard Rosenstein has represented landlords, tenants, subtenants and assignees in the negotiation, documentation and administration of hundreds of leases (and subleases) totaling millions of square feet of space in transactions ranging in size from less than 1,000 to more than 800,000 square feet.
- [Richard's approach to commercial leasing is collaborative](#). He believes in working closely with his clients' other professionals in a team approach to determine appropriate physical, economic and legal objectives for the lease transaction, and then to realize those objectives.

Richard's commercial leasing and building management practice includes work on such matters as:

- letters of intent;
- lease negotiation and documentation;
- documents ancillary to the lease agreement including workletters, license agreements respecting such matters as roof rights and parking, take-over agreements and commencement date agreements;
- lease security issues and documents, including guaranties and letters of credit;
- agreements for and with lenders such as estoppel certificates and subordination, nondisturbance and attornment agreements;
- lease amendments, lease terminations, lease extensions and expansion options and rights;
- agreements with space planners and contractors;
- construction contracts and issues, and lien matters;
- lease enforcement and default matters;
- property insurance, casualty and waiver of subrogation matters;
- liability insurance, waiver and indemnity issues;
- sublease and assignment matters;
- dispute resolution;
- lease review and analysis of individual leases for tenants and building portfolios for landlords;
- lease and portfolio administration of individual leases for tenants and building portfolios for landlords;

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- building management and operating issues representation;
- brokerage agreements and matters; and
- management agreements.

Lease Negotiation and Documentation

Richard works with his landlord clients to develop lease forms and provisions and other required documents which

- not only protect the landlord,
- achieve its operational as well as financial objectives, and
- can be readily financed, but also
- are balanced and reasonable, so that unnecessary, protracted and costly negotiations with prospective tenants and their brokers and attorneys can be avoided.

He counsels his tenant clients to understand two fundamental concepts.

- First, to understand the interrelationship between the business terms and legal issues to be negotiated, so that the lease will reflect the benefit of the bargain for the tenant, and will not contain provisions which make some of the anticipated benefits illusory.
- Second, to understand the allocation of certain risks under the lease, so that the tenant can, to the extent possible, take actions to minimize or eliminate those risks.

In respect to both of these concepts, our input at the letter of intent stage of the lease transaction can be invaluable.

Lease Review and Analysis

It is common to hear both tenants and landlords say something to the effect of "hopefully we'll put the lease in a drawer and never have to look at it again." What they mean, of course, is that the parties hope that there won't be any "problems." But not having any problems does not mean that the parties need not be aware of and concerned with the provisions of the lease, or should not have occasion to refer to the lease.

What often happens in practice, however, is that the tenant's office manager and the building manager (the persons charged with administering the lease) either do not know, or do not understand the effect of, what is in the lease document beyond the fundamentals such as the rent provisions. In many cases, the lack of knowledge about the terms of the lease results because the persons who negotiated the lease and the persons who will administer the lease are not the same. In any event, the parties tend only to review the document if there is an issue such as a default, a request to assign or sublease or make repairs, a desire to expand the premises or extend the term, or a casualty.

This situation is unfortunate because the modern commercial lease provides for extensive rights and obligations for both parties, the implementation of which can have significant operational, economic and legal consequences for both the landlord's building and the tenant's business. Only by fully understanding those rights and obligations and being fully cognizant of the application, interplay (such as among insurance, casualty and indemnity provisions) and implementation of those rights and obligations to particular situations can informed business decisions be made and appropriate and timely actions under the lease be

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undertaken.

Richard believes that it is important for both landlords and tenants to have leases reviewed and analyzed by counsel not only before exercising rights, responding to requests or undertaking actions, but also proactively to make sure that the full benefit of the bargain is being received, that opportunities bargained for are not being missed (such as options on the tenant side by a failure to timely exercise) and that each of the parties is, in fact, complying with its obligations under the lease (How many letters of credit have expired because the landlord did not follow up? How many tenants are overpaying taxes or expenses on a net lease or for certain additional services because they do not fully understand the applicable lease provision?).

Well before any expansion, extension, move or other significant action is contemplated by a tenant, or a sale or refinancing is contemplated by an owner, it is important to know what the status of the lease obligations is not just generally, but in detail.

Lease and Portfolio Administration

Richard's lease and portfolio administration work not only provides the benefits to his clients of lease review and analysis, but also provides to his clients the value added and economies inherent in continuity of representation and familiarity with the file.

Some of the many areas where Richard's ongoing involvement with individual tenant leases for his tenant clients and building portfolios for our landlord clients would be beneficial include:

- responding to estoppel certificate requests on behalf of the tenant, and managing the estoppel process on behalf of the landlord;
- negotiation of subordination, nondisturbance and attornment agreements;
- handling letter of credit matters;
- handling assignment and sublease matters, including tenant documentation and landlord consents;
- negotiating and preparing lease amendments; and
- handling enforcement issues on behalf of landlords and tenants, including such matters as defaults and disputes respecting additional rent calculations and payments.

Building Management and Operating Issues

In Richard's representation of building owners and managers, he regularly handles such matters and issues as:

- management agreements;
- agreements with vendors and contractors such as janitorial, elevator maintenance, window cleaning and security contracts;
- lien matters;
- tenant occupancy matters and issues;
- building services issues;
- parking, storage, roof rights and back-up generator site licenses and issues;
- communications and power issues;
- security matters;
- ADA and other governmental and regulatory compliance issues;
- insurance matters and issues; and

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- repairs and casualties.

Team Approach

Richard believes in working closely with his clients' other professionals in a team approach to assist the client in establishing and then realizing appropriate physical, economic and legal objectives for the leasing transaction.

A well- rounded team from a tenant representation perspective would consist of:

- a knowledgeable broker who not only knows the market, but also knows how to analyze the economics of transactions, so that the various space options can be accurately compared (Richard will be pleased to refer you to brokers who do work primarily in Chicago as well as brokers who work nationally, and with whom he has worked closely over many years, for your qualification.);
- an architectural and engineering consultant who not only can prepare plans and specifications, but who also will be of assistance in making a determination as to space requirements (including projections for future growth and how to utilize the leased space in order to obtain optimum efficiency) and managing a build-out within the budget; and
- a lawyer with commercial leasing experience who not only will be able to confirm that the lease sets forth the business transaction which was negotiated, but also will be of assistance in structuring and negotiating the transaction based upon his understanding of both the underlying law of leasing and the practicalities of building operation.

It would be ideal if the team could be assembled prior to starting the process. Unfortunately, however, while many prospective tenants have engaged a broker, and some have engaged a design professional, only a few have thought to involve a lawyer with commercial leasing experience at the site or building selection stage of the transaction.

In Richard's experience, it would be very beneficial to the process of identifying appropriate objectives and achieving those objectives if experienced commercial leasing counsel were to be brought into the matter at the earliest possible point. If counsel is "in the loop" to assist in the negotiation of the letter of intent, there will be an opportunity to "pre-negotiate" some of the issues and lease provisions as part of the business transaction. Negotiating these issues and lease provisions after a letter of intent has been executed would be more difficult, time consuming and costly.

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