



A Few Thoughts About Square Footage Issues in Commercial Lease Transactions

1. Size matters, right? When it comes to leasing commercial space in a shopping center for your new small retail business, it definitely does! Square footage is an important concept in leasing because the agreed-upon amount of square footage in a leased premises typically will dictate the economic terms of the deal, including base rent, operating expenses and taxes (i.e., common area maintenance, or CAM) owed by a tenant. In determining base rent, landlords and tenants often agree to pay a fixed amount of annual rent (paid in monthly installments) at a cost per square foot. Additionally, with respect to CAM, tenants generally pay their percentage share, which is determined by dividing the square footage of the tenant's premises by the total square footage of the shopping center of building (beware of exceptions buried in the written lease agreement).

2. Measuring Square Footage. Since the economics of the deal between a landlord and tenant are so intricately tied to square footage, it is critical that small business owners understand how square footage is calculated. For example, a tenant may believe that it is getting a fair rental rate per square foot for its leased space but realize months later that the square footage of the premises is inflated to include space beyond the four walls of the premises. One would think the measuring the square footage of leased space would be a standardized practice in the real estate industry. Oddly enough, it is not. There are several different ways to measure the square footage of a leased premises; not surprisingly, different measuring techniques benefit different parties:

- Useable Square Footage includes only the inside face of a tenant's enclosing walls (preferable to tenants);
- Gross Square Footage includes the thickness of the exterior walls along with interior stairs and shafts (preferable to landlords); and
- Rentable Square Footage is the most expansive definition and includes not only the actual space leased to the tenant but also the tenant's pro rata share of the square footage of the shopping center or building's common areas (lobbies, hallways, bathrooms, storage areas, etc.) (preferable to landlords). This definition was developed to give landlords a way to recover the cost of CAM on behalf of the tenants.

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The type of building often dictates how a landlord will measure the premises. For example, office buildings or shopping centers typically have multiple tenants and common areas and are often measured by Rentable Square Footage. On the other hand, warehouses and industrial buildings often have single tenants and/or no shared spaces, and they are often measured more logically by Gross Square Footage.

3. Tenant Protection Tips. As a potential small business tenant, one way to determine how much you are paying for the usable square feet of a space is to simply measure it with a measuring tape. By measuring square footage manually, a tenant can calculate the rental rate per usable square foot. Another way is to negotiate into the lease a so-called “remeasurement” clause. Although most landlords will hesitate to include such language, you should try to negotiate into the lease a right to have the leased premises remeasured by an independent third party (e.g, an architect) within 30-60 days after taking possession (definitely prior to the time you begin to pay rent).

Such a remeasurement clause is especially important when tenants are leasing space in a building under construction (or when construction has not yet begun). Although a tenant can rely, to some extent, on the plans and specifications drawn up prior to the construction of a space, the post-construction square footage is likely going to vary from what had been promised to the tenant. In fact, a tenant moving into a newly constructed building would be well advised to try to bargain for language in the lease ensuring that the rent is recalculated in accordance with the actual square footage constructed, along with a right to terminate the lease if the landlord delivers a space materially different than what was promised prior to construction.

4. Measuring Standards. Although measurement methods are not regulated, there are published standards that many landlords utilize on a regular basis, including the method published by The Building Owners and Managers Association (“BOMA”).

BOMA measures usable square footage by measuring the actual occupiable area of a floor or tenant space. While BOMA approved different methods over the years, many landlords use the 1996 method, allowing a landlord to incorporate a “loss factor” that includes—in a tenant’s square footage—all of the common areas in the building, rather than just those on the tenant’s floor. Different regions of the country rely on other standards.

5. Take Aways. No matter the real estate market or the standard employed, understanding the method of measuring square footage of a leased premises can save significant time, energy, and expense (e.g, if a space is being measured using gross square footage, a tenant, aware that it is paying for more space than it is actually occupying, is in a better position to negotiate a lower rental rate per square foot). By appreciating how space is measured (and confirming the square footage measurement is accurate), small business tenants can ensure that they are getting what they bargained for and reduce the risk of confusion and controversy with their landlord.