Representing Not-for-Profit Tenants in Leasing Transactions

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I. The Client

A. How are not-for-profit clients different?

1. Real estate is not their core business.

2. Generally, they lack real estate expertise.

3. May be eternal optimists and naïve as to costs.

4. Are subject to greater regulatory and community scrutiny.

5. Board members may hold differing opinions regarding the merits of a project.

B. How is the leasing process different?

1. Often they underestimate the time required from the start-up of their space search to move-in and do not plan for the possibility of construction delays.

2. Often they underestimate the amount of staff personnel involvement required.

3. Frequently they do not realize the disruption to their organization.

4. They may underestimate the cost to their organization – especially with regard to tenant buildout and IT.

5. Need to build in time for, and process to obtain, consent of Board.

6. May think use of a board-connected broker or attorney is an easier path.

C. How are their needs different?

1. May need governmental approvals – medical, education.

2. May be dependent on irregular governmental and foundation support (and such support may be conditioned in various ways, including real property requirements).

3. Accounting for leases (especially after 2020) may be different.

4. May require that physical changes be made to space to comply with law – Article 28, HIPPA.

5. Exemption from real estate taxes if owner is exempt.

6. Potential exemption from sales tax on construction they undertake for their own benefit.

7. May need separate entrance if have client visitations and/or separate elevators and path of travel (particularly for children).

8. May be attractive as a user of designated “community facility space.”

9. Need to be attentive to political and community support for major projects given stakeholder relationships.

II. <u>Customary Lease Provisions Which May Affect Not-for-Profits Differently.</u>

1. Permitted use – may define too narrowly – need for flexibility.

2. Cancellation rights – especially if dependent upon government funding or grants.

3. Assignment and subletting – need for transfers to successors and affiliates – stock ownership can’t be the test. Net worth tests also do not work.

4. Need to expand and shrink space.

5. Space-sharing with coordinated organizations.

6. Management of costs of buildout and tenant improvement allowances – including landlord fees and holdover expenses at existing space.

7. Costs of services – especially overtime usage.

8. Security deposit – need for flexibility – need for burndown – letter of credit.

9. Renewal rights – especially if large buildout cost.

10. Parking – especially handicapped.

11. Programmatic Requirements (*e.g.*, playgrounds for schools, laboratory and clinical spaces for medical providers).

12. Wish list –

a. green building requirements

b. air quality standards

c. bicycle parking

d. terraces

13. Signage needs.

III. <u>Leasehold Condo</u>

1. New York City has taken position that if have 30+ year leasehold, tenant can create leasehold condominium and be exempt from real estate taxes.

2. Need landlord buy-in.

3. Cost and timing.