

# Welcome!

## Commercial Leasing: Three Perspectives

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- The **largest business and litigation law firm** headquartered in the Research Triangle area and one of the largest in North Carolina
- We provide a **full range of legal services** to a diverse and dynamic group of **regional, national and international clients**, ranging in size from **large public companies** to **emerging growth businesses**
- Dedicated to furthering clients' interests by providing **intelligent guidance, strategic counsel, solid advice** and **excellent results**



## DELIVERY OF PREMISES

- Remedies for late delivery of premises
- Substantial completion of upfit improvements
- Early access rights

# CONSTRUCTION STANDARDS

- Warranty
- Standard of care for design and construction, repair warranty obligations

## USE OF PREMISES (PERMITTED, REQUIRED)

- Narrow or broad permitted use
- Requiring Tenant to operate for certain hours
- “Going Dark”

# LEGAL COMPLIANCE

- Landlord: It's your space!
- Tenant: It's your building!

# EXPENSE RESPONSIBILITIES

- Discussion on pass-through concept
- Variations based on types of space



# NOTICES BEFORE DEFAULT

- Monetary vs. non-monetary
- “Tenant Delay” notice periods



## LATE FEES

- What is standard?
- Waiver of late fees.

## LANDLORD DEFAULT CLAUSE

- Avoid confusion
- Should track “non-monetary” Tenant default language

# WAIVER OF JURY TRIAL/NO JOINDER

- How these issues impact eviction
- Compromises

## PERMITTED ALTERATIONS

- Removal obligation at end of term
- Approval process for upfit improvements

## “REASONABLE” TRANSFER RIGHTS

- Permitted transfer language
- Profit sharing upon transfers

# REPAIR RESPONSIBILITIES

- Typical Landlord responsibilities
- Typical Tenant responsibilities
- HVAC

## MUTUAL INDEMNITY

- Should cover a party's negligence, misconduct, and breach of Lease obligations
- Should not have to indemnify against another party's own negligence
- Mutual waiver of subrogation? Fine by me.
- Fully mutual vs. "mutual enough"

# WHAT DOES “QUIET” ENJOYMENT REALLY MEAN?

- Tenant's ability to use and enjoy the premises is permanently and intentionally harmed by an act of the Landlord
- Commercial context
- Matters of record



## ENVIRONMENTAL LANGUAGE

- Almost always written MUCH more broadly than the situation warrants.
- Avoid “indemnity traps” and language that makes you essentially a guarantor of the environmental condition of the Premises, particularly if just an office tenant of a full service building.

## LIMITATION OF LANDLORD'S LIABILITY

- Carve out Landlord's shareholders and officers
- Limit Landlord entity's liability to time of ownership of premises- Landlord released from liability to Tenant upon a transfer
- Limit Landlord's liability to equity in the property or proceeds therefrom

# ESTOPPELS (WHAT THEY ARE AND LEASE PROVISION CONCEPTS)

- Time frame to return
- Power of Attorney/Presumption of correctness
- Cap on requests per year
- Fees

# SNDAs (WHAT THEY ARE AND LEASE PROVISION CONCEPTS)

- Rejoice! You're in the South.
- Practically speaking, it's in everyone's benefit to leave a blameless, rent-paying tenant (that has done nothing wrong) in place.

# GUARANTYS

- Do they add value?
- Various caps

# ALLOCATING AND CONTROLLING COSTS OF UPFIT DESIGN AND CONSTRUCTION

- “Turnkey” vs. “Allowance” models
- Cost Statement approvals
- Change Orders



## CONTACT US

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