

Real estate advice I'm giving to tenants, owners

As I penned this column, it was Good Friday and Passover.

I hope everyone had a wonderful Easter and Zissen Pesach!

Most of you have folks from whom you solicit advice. Those of you who own a business most likely get counsel from a banker, attorney or CPA. Others may seek wise words from priests, clergy or a sage family member. And finally, maybe you take direction from TikTok, Facebook or Instagram.

Regardless, you rely on a trusted adviser of some kind. I am such a source for many of my clients. Today, I'd like to review some of the advice I gave last week and the situation that preceded the request for counsel.

Lease renewal on preset terms

We originated a lease in 2017. We represented the owner. Included in the transaction was a five-year term with an option to renew for an additional five years. As we've discussed here before, options are "personal" to the tenant and must be exercised within a specific time window.

If you fail to give your owner the proper notice, you lose out on options. In this case, the tenant wanted to remain in the building but missed his option window. He also wanted the owner to contribute to some construction expenses and wanted the right to buy the building.

So what advice did I give?

I recommended the owner renew the tenant at the preset option terms and contribute a small amount of the construction expense. Additionally, I suggested not granting a right to purchase.

So why? The family that owns the building relies on the rent for its livelihood. The tenant wants to remain and keep paying. An interruption of this stream through a costly vacancy, plus the expense of originating a new lease, would not be offset by a small bump in rent that could be achieved with a new occupant.

As to buying rights. These come in several flavors — option to purchase, right of first offer and right of first refusal. Most favor the occupant. Instead of limiting flexibility through a purchase right grant, I offered the owner: "Approach the tenant first if you desire to sell." There's no commitment to the resident but he's the most likely buyer anyway.

Lease term remaining

I was introduced to a light manufacturing company several years ago. It has not had a need for my services, but we've kept in touch.

Recently, the owner made a decision to exit the business she worked hard to build. The trouble was, time remained on her lease and the business buyer only wanted to occupy the premises for a short while, just enough time to relocate the business out of state.

This is typical of a strategic buyer who buys a competitor but has an adequate physical plant to consume the operation. Consequently, some time would remain once the new owner of the enterprise vacated.

So what advice did I give?

Fortunately, the lease rate she pays is dramatically below market, so she has a few paths forward.

The easiest is to approach the owner and request a buyout of the remaining obligation. Sometimes a landlord will see the benefits if a new tenant will pay more.

The buyout is based on the cost once downtime, broker fees, free rent and improvements are calculated. If that approach isn't palpable, the tenant can sublease — in this case at more money than currently being paid.

Some leases will ding you with a sharing of this profit, so beware.

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