



GENERAL COUNSEL AND THE HEADQUARTERS LEASE

BY ERIC ALLON

A general counsel is often asked to spearhead a company's efforts in connection with a headquarters lease. However, because most general counsel focus on matters other than leasing, there are numerous traps for the unwary that must be avoided to make the headquarters lease successful. Here are some key issues to keep in mind:

- Planning the timing for the move.
- Forming a multi-disciplinary team.
- Creating criteria, and locating the best space and landlord for the company.

- Negotiating the key terms in the letter of intent and the lease.
- Making sure the key construction benchmarks are met for landlord's and tenant's build-out and occupancy of the new space, and departure from the existing space.

TIMING

A move to a new headquarters must dovetail with the expiration of the existing lease, giving the company time to transition between the two locations before the holdover provisions of the existing lease apply. Many holdover provisions not only provide for double rents, but also make

the tenant liable for consequential damages that may occur – for example, if the existing landlord signs a new lease with another party for the company's space.

Accordingly, a company should begin the process of choosing a new headquarters several years in advance and consider several options, including staying in the same space. Recently,

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a major downtown tenant in Boston told the existing landlord that it was leaving before it had properly considered the cost of moving to a prospective space. When the company realized that it was more cost-effective to stay in the existing space, the landlord was able to drive a very hard bargain in relation to both financial and other terms of the new lease.

TEAM

At the earliest stage, the general counsel needs to select and meet with the team to set goals and priorities, with the CFO included to advise regarding the budget for the new headquarters.

The team should also include the head of human resources and the company's real estate/property manager, a commercial lease attorney and a broker (either with a space consulting group as part of the brokerage firm or with access to a respected group of consultants).

The internal team will decide generally the locations that will work for the company and its employees, including whether the company needs to be visible and easily accessible to multiple means of transportation to make commutes reasonable. Whether the company needs lab space as part of its headquarters is also a critical issue. Because there are tax and insurance issues that arise during lease negotiations, it is important to alert the accountant and insurance agent as well as a tax attorney that a new lease is being considered.

LOCATING THE RIGHT SPACE AND LANDLORD

At this stage in the process the broker, who understands the company's criteria, plays a key role in locating a variety of options. In the case of General Electric, the options included several

cities. Once narrowed to the Boston area, several locations were considered both for the temporary and final headquarters. Final decisions on both were partly based on proximity to the airport as well as South Station, the Mass Turnpike and Interstate 93, along with important infrastructure improvements promised by the Governor's Office and the City of Boston.

Sophisticated lawyers and brokers will pay attention to each and every detail of the move, including the track record of the landlord/developer to timely fulfill the tenant's requirements.

SITE SELECTION AND NEGOTIATIONS

Once several sites are selected as possibilities to fulfill a company's requirements, a broker will request a proposal from the prospective landlords. These requests generally cover such matters as the financial terms, landlord's work, tenant improvement allowance, extension rights, expansion rights, assignment, subletting and parking. Additional matters to be considered include any amenities that the company deems critical to its operation, such as a health club facility, a cafeteria, or in some cases a daycare facility that is always available for its employees.

General counsel often consult with the outside leasing counsel to review proposals and to propose inclusion of other legal considerations, including legal issues surrounding a proposed sublease from a ground tenant or a lease from a condominium unit owner. For example, a major suburban tenant recently failed to properly address parking concerns in a lease with a condominium unit owner where the parking was in the common area of the condominium and controlled by the condominium association. This left the tenant without a remedy when serious parking problems developed.

A headquarters lease is a major undertaking. The responsibility of the general counsel to properly oversee and coordinate the transaction is critical to the success of the new headquarters, and its ability to meet the company's goals for the future. ■



Eric Allon is a partner at Bernkopf Goodman LLP. His principal practice areas are real estate law and business law, with particular emphasis on commercial leasing, the acquisition, management and sale of properties, financing transactions, commercial loan workouts and residential and commercial development. eallon@bg-llp.com