

Green Leases

Adding Value to Landlord and Tenant Alike

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After years of acquiescing to terms favoring landlords, commercial real estate tenants now hold the advantage in lease negotiations. For the last several years, landlords controlled negotiations and tenants received few if any concessions. Now, that relationship is inverted with landlords wooing prospective and existing tenants like never before. With landlords worried about a shortage of creditworthy tenants, and tenants worried about deteriorating economic fundamentals, is there an opportunity to establish a balanced, win-win relationship?

Mutual commitment to a green office environment may be one such solution. With more new green buildings entering the market, existing buildings undergoing energy-efficiency retrofits, and an increased desire for organizations to showcase environmentally sustainable practices, the green office presents promising opportunities for landlord and tenant alike. Green leases can mutually incentivize landlords and tenants by establishing parameters to design, construct and manage sustainable buildings.

Most tenants and landlords now see value in building and occupying sustainably designed and constructed office space. But as landlords and tenants enter into new leases, they are recognizing conventional, standard leases typically perpetuate divergent interests that discourage cost-effective resource conservation and energy efficiency.

From the tenant's perspective, standard multi-tenant gross leases offer no incentive to implement energy-saving procedures since tenants pay a pro-rata share of the landlord's building-wide utility bills. And if landlords improve energy efficiency, it may not be able to easily recoup those costs from existing tenants. In a net lease, the landlord has little incentive to improve the building's energy performance since the tenant pays its own utility bills.

But, since energy costs are typically only a fraction of a tenant's cost of doing business, tenants are more likely to cut costs through personnel changes or changing suppliers, rather than changing light fixtures. Even if tenants wanted to make capital improvements, they would only do so to the extent they could reap economic benefits over the life of its lease. Standard gross and net leases do not incentivize energy conservation or efficiency for landlords or tenants.

How can landlords and tenants align to tackle urgent questions of energy consumption and greenhouse gas reductions? A new kind of gross lease – a "Green" Lease - would transfer control of the building's operating costs back to the landlord, encourage or mandate green office building and energy efficiency, and provide shared cost savings to tenants when they reduce energy consumption.

For owners, green lease benefits include increased building value and market quality perception, increased occupancy, and decreased turnover. For tenants, benefits include increased brand marketability, increased employee retention and productivity, reduced absenteeism, and reductions in health premiums and worker's compensation claims. Mutual benefits include lower energy and operations costs and potentially reduced insurance premiums.



Green leases can be based on a standard commercial lease with the addition of a few critical provisions that address questions such as:

- What benchmark defines the premises as green? Is it a third-party independent rating systems such as LEED, EPA Portfolio Manager, Green Globes, or a set of mutually agreed-upon performance goals?
- How are green-related costs shared? Costs could include sustainability consultants and engineers as well as construction costs.
- Is there a green building insurance policy that insures green like-kind replacement and re-commissioning costs if a loss occurs?
- How are green provisions enforced? If a violation constitutes a default, specific remedies should be negotiated, with financial penalties as needed.
- How are energy consumption data and utility bills shared and audited to determine real energy costs and savings?
- Is there a tenant improvement manual identifying green build-out procedures and minimum performance specifications? Include items such as: construction waste management; energy and water use reduction; energy-efficient lighting, heating and cooling; and improved indoor air quality standards through better ventilation and use of low volatile organic compound (VOC)-emitting materials .
- Is there an environmentally friendly purchasing standard for products, cleaning supplies and consumables used in the building?
- Is individual tenant accountability for resource and energy consumption tracked through the building management system?
- How are capital improvements that decrease building-wide resource and energy consumption and operating costs shared with tenants? Should tenants be allowed to audit such projects to confirm proper allocation of savings?

An excellent resource for further green lease information is BOMA's Green Lease Guide, which outlines specific green provisions and enforcement mechanisms to incentivize landlord and tenant cooperation.

As all buildings will eventually be built and operated sustainably, green leases will become standard too. Until then, it is important to distinguish the provisions that set green leases apart from standard commercial leases. These leases must explain how green provisions align landlord and tenant interests to achieve mutually beneficial cost savings. In addition, savvy landlords and tenants will also realize that green leases provide the tools and benchmarks needed to quantify energy consumption and calculate carbon footprint as demanded by today's corporate sustainability reporting requirements.

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