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# **Top 10 Facility Acquisition Mistakes**

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A Survey of the



INTERNATIONAL TENANT REPRESENTATIVE ALLIANCE

Revised 2008



# TOP 10 FACILITY ACQUISITION MISTAKES

*The following list of common mistakes is the result of a survey taken among members of the prestigious International Tenant Representative Alliance (ITRA.) Each participant drew from an average of over 20 years of Tenant Representation experience, representing and advising national and local commercial tenants with hundreds of leases totaling millions of square feet. Most major U.S. markets were included. We present these mistakes as a means for learning and avoiding the pitfalls that can complicate the facility acquisition process.*

## #1 - NOT ALLOWING ENOUGH TIME

Facility research, property inspections and comparison analysis can usually be completed in a week or so by motivated companies already familiar with the local market. However, those tasks are only the *tip* of the "time drain" iceberg, and several commonly overlooked complications need to be factored into the relocation timeline: (This assumes the space is not going to be taken as-is, which while possible, is unlikely.)

- Negotiations: Negotiations with the Landlord and preparation of the lease can span weeks or months.
- Renovations: Once the lease is signed the interior often needs finishing or renovating, which can add additional months.
- Permits: Before the aforementioned renovations can begin, building permits must be obtained. This will take additional months – longer if the municipality is "backed up" or if the plans are rejected for a technicality and require revisions.
- Architectural plans: Architectural plans must be completed to receive building permits and finalizing plans can easily take one to two months.

If existing, acceptable facilities cannot be found, new construction can easily take 9 months to a year; horror stories abound in the industry of it taking even longer.

***Bottom line: 6 months to a year is a reasonable time frame to use when looking for new facilities. Expect the process to take even longer if experienced professionals are not used to guide the process.***

## #2 - NEGLECTING LONG-TERM PRIORITIES

Owners who think only about solving immediate needs can face expansion problems again very soon. In addition to evaluating short term needs relative to square footage requirements (number and size of rooms), type of floor plan (open, private, or a mixture), communications needs, parking needs, access and security needs, etc., be sure to factor in long term needs. By obtaining *facilities* and *lease terms* which will allow the company to expand, downsize or relocate as circumstances dictate, business owners can avoid the unnecessary headaches, loss of business and costs associated with relocating. Examples of such important lease clauses include:

- Expansion right obligates the Landlord to provide the Tenant with more space should it become necessary.
- Cancellation right (commonly referred to as a “kick-out” clause) allows the Tenant to break the lease under certain conditions such as when the Tenant needs to expand and the Landlord cannot provide them additional space on the premises.
- Extension right is similar to a renewal option and allows the Tenant to remain in the premises (a right of first refusal is a type of extension right).
- Sublet right gives the Tenant flexibility in that if it must relocate, it may sublease the space and mitigate the economic pressure.

***Suggestion:*** *After discussing the company’s immediate needs and long terms goals with senior management in all departments, meet with leasing experts and space planners/architects to determine:*

- a) the most productive combination of office size and layouts (modular furniture, hoteling, size, amenity requirements, etc.)*
- b) facilities which are flexible enough to service future needs*
- c) certain lease clauses which will be negotiated into the lease document*

## **#3 - INADEQUATE REPRESENTATION**

Unless someone in the company is already an expert in commercial real estate, most business owners cannot afford the time necessary to learn this complicated industry. Lack of knowledge combined with time pressures can cause unrepresented owners to make location decisions without being aware of ALL the choices, and/or make costly errors that cut into their profits and increase their financial exposure.

An experienced and specialized Tenant-Rep counterbalances the Landlord’s professionals, and will insure that the Tenant receives the best possible rates, terms, incentives and lease clause protections. Incredibly, this valuable service may cost the business owner nothing, since Tenant Reps usually share in the Leasing fees paid by the Landlord.

Using the *wrong* broker may lead to incomplete information or conflicting loyalties because of hidden agendas or Landlord relationships.

***Suggestion:*** Use an experienced Tenant-Rep Broker to take advantage of their well developed and extensive network, an asset that allows them to commonly find facility choices which are not yet vacant or on the market. Business owners who do not use a Broker will likely not be aware of all the possible facility choices. Additionally, business owners should also keep their Broker involved in the expansions, contractions, renewals and extensions that occur during the lease to prevent uninformed decisions that lead to lost opportunities.

## **#4 – LEASE COMMENCEMENT DATE NOT TIED TO BUILDING COMPLETION**

This has been a disaster for many inexperienced Tenants who found that unexpected delays in the planning, permitting or construction stages ate into their rent-free build-out period and caused budget nightmares.

***Suggestion:*** Business owners should always propose a clause to the lease which provides for an extension of the lease commencement date if pre-opening delays are encountered which are beyond the owner's control. Your professional Tenant-Rep can suggest some good lease language.

## **#5 - UNDERESTIMATING THE CONDITION OF THE PREMISES**

Tenants who take a property "as is" put themselves at great risk. Even when the space looks fine and has been previously occupied, building codes may have changed or the unit's infrastructure could be broken or inadequate.

***Suggestion:*** It is best to have the Landlord guarantee that the space is up to current building, fire, safety, zoning and ADA codes. The Landlord should also guarantee the condition of the electrical, plumbing, heating and air-conditioning systems for the first 60 to 90 days (if not the entire term of the lease.)

## **#6 - USING THE LANDLORD'S PROFESSIONALS**

Tenants should hire and use architects, general contractors and legal counsel under their control to create and review the various space plans, specifications, costs, and documents. Otherwise, the Tenant may receive inferior designs and/or fixtures that are less efficient and could eventually dramatically increase yearly operating costs.

## **#7 - MISUNDERSTANDING THE TRUE SPACE COSTS**

Business owners who are inexperienced with commercial real estate are often unable to perform true “apples to apples” analysis when comparing different facility choices. It can be complicated, even for the professional, to compare the different lease types (including Full Service, Gross, Semi-Gross, Net, Triple Net, etc.) Additionally, the following factors should be part of the comparison equation: the Landlord’s interior finish levels, Tenant Improvement (TI) contributions, and lease incentives. The confusion and myriad of things to consider leads many owners to make less than optimum decisions.

## **#8 - PAYING TOO MUCH RENT/ NOT ENOUGH LANDLORD INCENTIVES**

Companies and Business Owners that do not obtain accurate, current market research may pay too high a rental rate or receive too few incentives, including benefits like free rent before and after lease commencement, discounted rent for various time periods, Landlord contributions to tenant’s build-out costs, landlord improvements to the space, limits on future rent increases, etc.

A Landlord’s “flexibility” changes constantly depending upon many factors including current occupancy rates in both their building and the competition, lease length, tenant’s use, parking requirements, financial strength of tenant, etc. Negotiations are especially important with lease renewals, since Landlords are most competitive when the space is placed on the open market.

## **#9 - NO DISASTER PLANNING**

Think of the havoc wreaked if a hurricane or fire destroys all or part of your premises. Many Tenants do not realize that most leases allow Landlords unlimited time to rebuild the premises. Although rent may be abated during this period, the Tenant is NOT free to lease other space and get on with business.

## **#10 - NO OUTSIDE INCENTIVES**

When a company relocates, it may be possible to obtain substantial economic incentives from local government. These incentives include tax rebates, relocation assistance, payroll subsidies during employee training, infrastructure improvements and others. Many times the statutory incentives can be negotiated up very substantially and an inexperienced company may leave millions of dollars that they could have gained through such incentives on the table.

***Suggestion: Use an experienced "location analyst and incentive negotiator" to make sure you obtain the best incentives possible.***

## **OTHER LEASE NEGOTIATION & SITE SELECTION MISTAKES**

### **WRONG ZONING**

If the Tenant does not have adequate representation, it can wrongly assume the zoning is suitable for its use. This is particularly a problem in medical and/or research and development companies, as different municipalities deal with these uses in entirely different, and often inadequate, ways.

### **TENANT PERFORMS THE BUILD-OUT**

It is often better to have the Landlord perform the actual build-out work, so that unexpected problems or delays will be the at the Landlord's cost. When it is appropriate for the Tenant to perform the build-out, have the lease provide for an extension that provides extra Landlord monetary contribution if unexpected repairs are required (termites, code violations, etc.) or if delays are encountered which are not the fault of the Tenant.

### **NO LIMIT ON PERSONAL GUARANTY**

Many times it is possible for the Personal Guaranty to expire "x" months after lease commencement or provide a specific dollar amount of guaranty. Although not as beneficial, it may be possible to use an "Evergreen Guaranty" which provides that Tenant will personally guaranty a set number of months or years, commencing upon default by Tenant. Your professional will know what is typical for your market.

### **LIMIT ON FUTURE FLEXIBILITY / COMPANY GROWTH**

How fast is the company going to grow? Will it be necessary to downsize? How likely is a new partner or merger? These situations and others prove the Tenant's need for as much flexibility as possible. Tenants should work with experienced professionals to insert language into the lease which will allow a cancellation or modification of the lease under certain circumstances.

### **LIMIT ON FUTURE FLEXIBILITY / PRODUCT GROWTH**

Will the company want to carry a new product line or install a new technology? Will a neighboring Tenant vacate (or move in) and impact the business? Tenants should be cautious with their "Use Clause" since these clauses can be very specific as to what goods and services the Tenant will provide. Often, these clauses can prevent a Tenant from offering a very lucrative future product or service – think about what systems and products have not yet been invented!

### **CHOOSING THE WRONG LOCATION OR A TURNING MARKET**

Tenants who do not know the local market may locate to a declining area, making it impossible to hire and retain the highest quality employees. It is the business of a professional to know which areas are on the rise and which are not.

### **CHOOSING THE WRONG LOCATION - PENNY WISE AND POUND FOOLISH**

Retail tenants who choose locations in unanchored properties to take advantage of lower rental rates often shoot themselves in the foot. Poor location means traffic and subsequent sales volumes are dismal, and tenants fight a losing battle. Such oversights are rarely errors made by seasoned Tenant-Broker Reps.

### **HAMSTRUNG BY YESTERDAY'S TECHNOLOGY**

Occasionally, the office building is not set up with the newest in telecommunications and data cabling, resulting in a Tenant that cannot benefit from today's technology. Business is lost to competitors which can offer better service to clients.

### **TAKE TOO MUCH SPACE**

Tenant did not use their own space planner and leased offices which were too large or had an inefficient floor plan. An eager Landlord rarely cares what the true needs of the Tenant is when attempting to find an occupant for their space.

### **SPACE WAS MEASURED INCORRECTLY**

Tenant did not verify the Landlord's dimensions and figures and paid rent on "phantom" space.

### **UNNECESSARY SECURITY DEPOSIT**

Landlord asks for Security Deposit as standard procedure, but does not require one depending upon Tenant creditworthiness and/or build-out requirements.

### **NARROW SEARCH**

The Tenant will often limit its geographic area of interest too severely and does not complete adequate market education due to lack of interest. This will lead to an unbelievable amount of lose opportunities.

### **HOLD-OVER PENALTY IS TOO HIGH**

Standard hold-over penalties in first draft lease agreements are typically far higher than necessary.

### **NOT REVIEWING THE LEASE OFTEN ENOUGH**

Tenants miss notification dates, resulting in automatic renewals, loss of option period or other penalties.

### **POOR DESIGN**

Tenant can make poor choices during the interior design stage because of focus on the least initial cost rather than lifetime operating costs. Many times upgraded lighting, windows or insulation can make very dramatic improvements in employee productivity, operating costs and business security. Your professional should be able to discuss the latest in facility design, materials and technology.

## POOR PLANNING

Imagine if a natural catastrophe occurs and electric power is lost for an extended period of time. Tenant is out of business, and losing clients, and income, at a rapid rate. Proper planning and/or design can eliminate potential business disasters.

*We hope you enjoy this material. If you'd like to put our 25+ years of experience to work for you and make the facility acquisition process painless, give us a call.*

**To arrange a confidential meeting to discuss your needs, call:  
Michael Coretz 520-299-3400  
Michael@cretucson.com**

## Frequently Asked Questions about Working with a Tenant Rep

### **What is an Exclusive Tenant Representative?**

*Exclusive* Tenant-Reps only represent with Business Owners – **never Landlords.**

### **Why is that important?**

If a Landlord's Broker shows a space they have listed, who are they representing – the Tenant or the Landlord?? Answer: They are obligated to get the Landlord the best possible terms. Because of professional regulations and fiduciary obligations, brokers can represent *either* the buyer/tenant or the seller/landlord in a transaction – never both! Traditional brokers, by accepting a property listing, must represent the seller or Landlord. "Exclusive" Tenant Reps avoid this conflict of interest by not accepting listings and instead work with all the listing brokers and owners to locate properties and negotiate the best deal for their clients.

### **What can Tenant Representatives do for me?**

There are two important reasons why business owners use Tenant Representatives when they have a business need involving real estate.

- **Saves You Time** – We do the search for you. Our network of real estate brokers and developers provides you with all available options.
- **Saves You Money** – You not only save money by focusing on what you do best, your business, but we show you how to avoid future unnecessary expenses during lease negotiation.

Bottom Line: Tenant Reps act as your personal real estate experts in searching for property, making offers and negotiating leases or purchases on your behalf. They also

provide ongoing assistance throughout the term of your lease as well as other specialized services.

**What does it cost?**

Tenant Rep services, while highly valued, usually require no fee from their clients since they typically share in the fees the Landlord or Seller is paying his agent.

**What if I find something on my own?**

The Tenant Rep will still represent you. Give them the contact information and they will call on your behalf. This allows them to maintain the Client/Representative relationship from the start with the listing broker and avoids any misunderstanding. It's also key to remember that finding the location is often the easiest part of site selection – the lease and acquisition negotiations may be the most difficult part.

**Will I see everything available?**

That is the goal. Tenant Reps come much closer to uncovering 100 percent of available listings than the client attempting to do so themselves. Tenant Reps combine memberships in on-line databases, active commercial networks, vast industry contacts (including developers), current market knowledge, effective use of technology, research tools, and brokerage relationships to bring you results quickly.

