Life After Death – Coping with the Aftermath of a Co-Tenancy Failure

Author: Sunita Mahant, Senior Director, Legal Affairs, Ivanhoé Cambridge Inc.[1]
Susan. D. Rosen, Partner, Gowling WLG (Canada) LLP
Co-authors: Katherine Garretto and Daniel Minuk[2]

Today, we hear phases such as "*retail apocalypse", "the end of the mall", "death of brick and mortar retail"*. These are just a few of the phrases that have been used to describe the current state of the retail real estate market. There is no denying that the global commercial real estate market has undergone a significant seismic shift over the past few years, and the forces that have precipitated those changes, are ongoing and continuing to change the way in which commercial retail real estate is developed, renovated, repurposed, rejuvenated and effectively leased.

The aforementioned seismic shift in the retail landscape is also having a significant impact on how existing co-tenancy clauses are being interpreted, the remedies that are practically available when these clauses are violated and the manner in which new co-tenancy clauses should be written in view of the e-commerce retail revolution. Historically, a tenant of a certain size and/or brand recognition (the "**Benefitting Tenant**"), would require a co-tenancy clause be inserted into its lease to ensure that it would have the benefit of being located in a shopping center that had existing leases with one or more large department stores, grocery stores, supermarkets and/or named brand retailers, all with the expectation that these types of anchor or major tenants would drive traffic to the shopping centre generally, and to the Benefitting Tenant specifically. In this paper, we will consider the following questions from both the landlord and tenant's perspective:

- what is a co-tenancy clause?
- what type of tenant is considered an "anchor" or "major" tenant?

[1] The statements contained herein should not be attributed to the views or opinions of Ivanhoé Cambridge Inc. or any of its subsidiaries or affiliates.

[2] We would like to thank Katherine Garretto, Legal Counsel, Ivanhoé Cambridge Inc. and Daniel Minuk, Articling Student, Ivanhoé Cambridge Inc. for co-authoring this paper and recognize them for their efforts.

- what are the risks of restricting co-tenants to a defined list of anchor, major or named tenants and what effect has the changing retail landscape had on finding suitable replacement anchor/major tenants?
- what types of remedies are typically associated with co-tenancy clauses?
- what are some alternate approaches to redevelop and/or repurpose spaces vacated by departing anchor tenants?

In changing times it is imperative to consider changing approaches to doing business differently to ensure that both landlords and tenants don't get boxed in by the language in a given lease without considering inserting language into that lease to provide for viable options and solutions.

WHAT IS A CO-TENANCY CLAUSE?

The purpose of a co-tenancy clause is to ensure that a given or multiple anchor/major/named tenants are open and operating in their respective premises contemporaneously with the Benefitting Tenant. The Benefitting Tenant's expectation is that the anchor/major/named tenants will drive traffic and thereby business generally to the shopping centre. A Benefitting Tenant generally requests a co-tenancy clause to be added to a given lease to ensure that (i) a certain minimum number of tenants are open and operating in their respective premises in the shopping centre, (ii) a specific number of large tenants that lease premises in the shopping centre occupy a minimum number of square feet, and/or (iii) specifically named or class of tenants occupy premises in the shopping centre. Co-tenancy clauses can either be inserted into a lease as a condition precedent for the date upon which the Benefitting Tenant must be open and operating in its premises and/or as a prerequisite to the Benefiting Tenant being required to pay rent, operate in its premises and/or not be permitted to exercise a right to terminate the lease.

TYPES OF CO-TENANTS:

Statistics show that large and/or junior department stores, grocery/supermarket/super centre, large home improvements stores typically drive a significant amount of traffic to a given shopping centre. Accordingly, a Benefitting Tenant will typically request a co-tenancy clause because it believes that a given or multiple anchor/major/named tenant(s) will likely drive traffic to the shopping centre. Co-tenancy clauses are also requested by a Benefitting Tenant to ensure that the shopping centre will have a specific tenant mix. For example, requiring that only tenants who sell premium brands from their premises. More sophisticated Benefitting Tenants will include a list of specific tenants in their co-tenancy clauses to reduce any uncertainty what would constitute a premium brand or a large department store.

The following are some samples of clauses that refer to either anchor, major or named tenants:

- *"at least 2 of the Major Tenants are open and operating"*

- *"Major Tenant" shall mean any one of Hudson's Bay, Target, Sears, Canadian Tire, Lowes or Loblaws."*

- *"the following tenants must be open and operating: Winners, Nike, Sportchek, and Indigo"*

- *"a minimum of twenty five percent (25%) of the Shopping Centre must be leased to premium brands such as by way of example Hugo Boss, Prada, Louis Vuitton, Tom Ford and Holt Renfrew"*

Another approach to co-tenancy clauses is to require a minimum number of units or percentage of square footage be occupied in the shopping centre. Once again, the Benefitting Tenant is attempting to ensure that the landlord is motivated to keep the shopping centre leased up, which will drive overall traffic to the shopping centre and to the Benefitting Tenant. The following is a sample clause:

- *"At least 75% of the gross leasable area of the shopping centre shall be open for business and fully operational during the shopping centre hours"*

Landlords of course, prefer to not include a co-tenancy clause in a lease because it requires a landlord to assume a high level of risk by guaranteeing the tenancies of arms-length third party tenants over which a landlord has no control. Notwithstanding this risk, a landlord will often agree to a co-tenancy clause to incentivize and attract a particular tenant to its shopping centre. Accordingly, co-tenancy clauses are heavily negotiated. At the end of the day, the negotiation between the Benefitting Tenant and landlord becomes an allocation of risk and reward. While the Benefitting Tenant may insist on a co-tenancy clause to seek certain guarantees from the Landlord, it is impossible for a landlord to actually control the tenancy of an arms-length third party anchor, major or named tenant. Given the rise of retail bankruptcies and other changes in retailing today, landlords are now more than ever being forced to make the allocation of risk when agreeing to a co-tenancy clause. Accordingly, a properly drafted co-tenancy clause must contain clear, quantifiable and preferably time limited, remedies in the event that the co-tenancy clause is breached. Certainty in drafting always benefits both parties.

OPENING CO-TENANCY:

Some co-tenancy clauses require that the landlord achieve a particular occupancy threshold in order for the tenant to open its business from the premises, failing which, the tenant will be entitled to specific remedies. This type of opening co-tenancy clause is typically seen when landlords and tenants are entering into leases at the development stage of a shopping centre or if a shopping centre is being redeveloped or expanded.

The Benefitting Tenant wants assurances from the landlord that a minimum number of tenants in the shopping centre will be open and operating and/or that the anchor/major /named tenant will be open and operating. Tenants don't want to be the only one open in a shopping centre. Accordingly, landlords often try to negotiate a group if not all of the leases for a new or redeveloped shopping centre or phase of a shopping centre to all be open on the "Grand Opening". The opening co-tenancy threshold could contain one or a combination of conditions including specifically named tenants, a certain percentage of tenants, and/or a minimum square footage of the total shopping centre, be open and operating on the same day that the tenant is required to open for business.

The following is a sample opening co-tenancy clause:

- *This Lease shall be contingent on Landlord's execution of a binding lease with _____ [Insert name(s) from LOI] [OR occupancy by an anchor or major tenant occupying more than _____ (___) square feet of space in the Building/the Project (the "Co-Tenant(s)"), as evidenced by Landlord's transmittal to Tenant of the first and signature pages of the binding lease agreement with such Co-Tenant(s), and occupancy of the Project] by tenants who are open and operating (for at least eight (8) hours per day for six (6) days per week) in at least eighty percent (80%) of the Gross Leasable Area in the Project (collectively, the "Initial Cotenancy Conditions")***.***

The difficulty with an opening co-tenancy clause from a landlord's perspective, is that it is often problematic to successfully coordinate the completion of the (i) development work to complete the shopping centre, (ii) completion of all landlord's work referred to in leases that affect the shopping centre, and (iii) co-ordinate with multiple tenants to ensure that they complete their tenant's work. Delayed construction has a ripple effect. The delay in the completion of any one of the foregoing can effectively result in the delay of the opening of the shopping centre in its entirety and/or certain tenants not opening. In addition to some or all of the tenants not opening for business, many leases will likely impose penalties on the landlord for failing to open the shopping centre on a given day.

Similarly, even if the Benefitting Tenant's premises is complete and it is ready to open for business it may choose to not open until the opening co-tenancy clause is fully complied with, and as such, suffer multiple losses. A Benefitting Tenant's losses might include without limitation, staff that has been hired but are unable to work, time sensitive inventory that can't be used or sold, no return on the Benefitting Tenant initial capital investment, and lost opportunity to locate in different premises. While penalties and remedies are important to include in co-tenancy clauses, most Benefitting Tenants are of the view that they never fully compensate the Benefitting Tenant for its lost business and investment.

To the extent that a shopping centre can be developed or redeveloped in phases, it is recommended to tie the opening co-tenancy clause to a given phase. Often what is of key importance to a Benefitting Tenant is that (i) the shopping centre or phase looks like it is open for business, (ii) the parking lot is stripped, (iii) construction debris is either

removed or behind proper hording, and (iv) there are clear and unobstructed access points to the portion of the shopping centre that is to be open for business.

ONGOING CO-TENANCY:

An ongoing co-tenancy provides a Benefitting Tenant with certain remedies in the event a certain percentage/number of tenants or certain anchor/major/named tenants are not open and operating during the currency of the term of the lease. The key difference between the opening co-tenancy and the ongoing co-tenancy is that once the shopping centre or phase of the shopping centre is open then the opening co-tenancy is satisfied and no longer in effect, whereas, the ongoing co-tenancy is in effect for the term of the lease and sometimes during extension terms as well. Consequently, at any point during the term or extended term of the lease the landlord is at risk of an anchor/major/named tenant leaving, which gives the Benefitting Tenant a right to remedies, penalties and potential a right to terminate its lease.

Another difficulty with ongoing co-tenancies is that if a specific tenant is named as the required co-tenant or a specific type of use, such as department store or grocery store is named as the required co-tenant, it is possible that at the time that the co-tenancy clause is violated that the named tenant no longer operates or specific use isn't a viable use for the shopping centre. There are many leases that contain co-tenancy clauses that refer to Eaton's, Simpson, Zellers, K-Mart, Woolco, Target and Sears, all of whom are no longer in business. In addition, there are existing corporations, such as The Hudson's Bay, that may have decided to close down stores in certain locations. There are other existing corporations that may have decided to downscale their offering in a given location and change the branding of their store such as Loblaws to No Frills or Sobeys to Freshco.

When dealing with large anchor/major/named tenants, it is often very difficult, and sometimes, impossible to find alternate tenants. Many Benefitting Tenants will insist on a co-tenancy with Wal-Mart; however, Wal-Mart won't agree to operating covenants in their leases, which means that to the extent that a landlord agrees to give a Benefitting Tenant an ongoing co-tenancy with Wal-Mart, the landlord is at risk if Wal-Mart decides to close its doors in a given location. In some ways, ongoing co-tenancy clauses that name specific anchor/major/named tenants is similar to a game of Russian roulette. All parties should be mindful of this when entering into these types of clauses, which is why

the remedies section of the ongoing co-tenancy clause is so important.

As mentioned above, a co-tenancy may contain a combination of co-tenants, such as in the following example:

> *The following tenants shall be open and operating during the Term:*
>
> - *"(i) A Major Anchor or Suitable Replacement; and*
> - *(ii) 8 Major Tenants, 5 of which must be Named Tenants;* ***and***
> - *(iii) 75% of the Gross Leasable Area of the Shopping Centre is open and operating for business. ("Operating Requirements") Major Anchor shall mean Saks Fifth Avenue. Named Tenants shall mean DSW, Winners, Old Navy, Sportchek, Nordstrom Rack, Polo, Indigo, Nike or a Suitable Replacement Tenant."*

When combining multiple types of operating requirements, careful drafting is necessary to ensure the intent of the parties and the nuances are properly captured. One unintended word can change the interpretation of the entire clause. In the above-noted example, if the word "**and**" was replaced with the word "**or**", the requirements of the landlord would be completely altered, as the landlord could satisfy the entirety of the co-tenancy by satisfying just one of the three requirements.

RISKS ASSOCIATED WITH CHANGING RETAIL MARKET:

Technological changes such as the introduction of artificial intelligence, the explosive increase in e-commerce into mainstream retailing, the move of some retailers from brick and mortar stores to on line shopping otherwise known as "bricks to clicks", the proliferation of pick-up stations and direct to consumer delivery systems, have all changed the way consumers shop and retailers display, sell and deliver products to the consumer. The Canadian retail market is evolving and tenant retailers and landlords have no choice but to evolve with the market to cater to consumers' needs and expectations. To remain relevant and competitive in this retail evolution, it is imperative that both tenants and landlords change their perspective and maximize the opportunities that these disruptors present.

In 2017, approximately 50 international retailers opened their first brick and mortar locations in the Canadian marketplace. We are also seeing an increasing trend of

electronic retailers called “e-tailers” looking for and securing brick and mortar locations. As landlords and tenants are evolving to accept evolution in retail, so too, must the leases reflect this evolution. This is particularly true for a co-tenancy clause. Based on the changes in the retail market, especially in light of the recent large bankruptcies, including Target and Sears, landlords and tenants must both re-evaluate co-tenancy clauses contained in their leases.

Gone is the era of large department stores who were typically noted as the “anchor tenants” in co-tenancy clauses. In addition, large retailers are more readily prepared to close individual stores in underperforming locations. With the closure of Target and Sears, landlords across the country have been left with large spaces that they simply can’t rent to another tenant that is prepared to lease in excess of 100,000 square feet. Accordingly, it is becoming increasingly risky for landlords to agree to anchor/major/named tenant co-tenancy clauses without a well delineated remedy process.

REMEDIES:

The three most common remedies for a co-tenancy default are: (i) a partial or full abatement of the basic and sometimes the additional rent due under a lease until the default is rectified, (ii) the Benefitting Tenant either not opening or going dark during the period that co-tenancy default period, and/or (iii) a right in favour of the tenant to terminate the lease if the co-tenancy clause is not complied with within a specific time period. There are many variations for these remedies. The difficulty is of course the uncertainty of being able to find a suitable replacement tenant to occupy the space previously occupied by the anchor/major/named tenant.

The following is an example of a co-tenancy clause that provides a Benefitting Tenant with the first two remedies:

- *“Tenant shall have the option, commencing on the first day of the month following the date that Landlord has failed to meet the Co-Tenancy Requirements, to pay 8% of Gross Revenue in lieu of Rent (“Reduced Rent”) until such time that the Co-Tenancy Requirements are satisfied. In the event Tenant has been paying Reduced Rent, Tenant will have the right at any time after a 1 year period following commencement of the payment of Reduced Rent and the failure of*

Landlord to meet the Co-Tenancy Requirements to terminate this Lease on 60 days prior written notice to the other, and the Lease will terminate, unless, however, Tenant elects to pay Rent payable under the Lease."

In the above-noted sample clause, if the landlord fails to satisfy the co-tenancy requirements, the tenant has the right to pay a reduced rent. The concept that a tenant should be entitled to a remedy is premised on the idea that a tenant has, or will be, impacted financially as a result of the co-tenancy requirements not being satisfied. However, is a tenant always financially impacted as a result of a failed co-tenancy?

One way to establish that there has been a financial impact on a tenant is to include a "sales test" as a condition of a tenant being entitled to its remedies. A "sales test" will typically require a financial analysis of a tenant's sales before and after the failure of the co-tenancy requirements has been breached. The tenant will need to establish that it has incurred a reduction in sales, thereby showing damages entitling the tenant to pay reduced rent. The "sales test" analysis of damages suffered by a Benefitting Tenant is similar to the effect of a breached co-tenancy covenant has when a Benefitting Tenant is only paying percentage rent.

The Benefitting Tenant may take a contrary view to a straight "sales test" being considered as an accurate reflection of the financial burden suffered by the tenant as a result of the breach of the co-tenancy clause. The Benefitting Tenant may have mitigated its losses by selling its inventory at reduced prices resulting in overall lower net profits, it might have reduced its inventory purchases for the next season or seasons, it might have not suffered an immediate loss of profit but a gradual overall decline in profits over a period of time.

In the face of a co-tenancy breach a lease may permit the Benefitting Tenant to defer opening its store if its commencement date hasn't yet occurred, or the right to go dark if the co-tenancy clause is breached during the term of the lease. Unfortunately for the landlord, a deferral of the commencement date is generally tied to a deferral of the obligation to pay rent under the lease. If the co-tenancy clause is breached during the term of the lease then a landlord will generally attempt to negotiate a grace period prior to permitting the Benefitting Tenant to go dark. By including a grace period, the landlord is afforded some time to find a replacement tenant.

A third remedy in favour of the tenant for a co-tenancy failure is the option to terminate the lease. The right of termination is generally not the preferable option for either the Benefitting Tenant or the landlord, because the Benefitting Tenant has, *inter alia*, (i) established its business in its premises, (ii) made a capital investment in its leasehold improvements, fixtures and equipment, (iii) inventory and staff to deal with, and (iv) will lose business if it has to terminate the current lease and find a new location. A landlord doesn't want the Benefitting Tenant to exercise a termination right because it will not only lose a tenant and the rental revenue associated therewith, but will have one more unit vacate in its shopping centre, which could accelerate another tenant's co-tenancy clause.

Co-tenancy clauses that contain termination rights in favour of the Benefitting Tenant often also provide for a period in which the landlord has to find a replacement tenant. From a negotiating perspective, landlord generally prefer rental abatement over a termination right. However, for those leases that contain a rental abatement in favour of the Benefitting Tenant, a sophisticated landlord will insist on a sunset provision that requires the Benefitting Tenant to either terminate the lease or cease benefitting from the rental abatement. In addition, for those leases that permit a tenant to terminate, a sophisticated landlord will insist on a reciprocal right to terminate the lease. The purpose of these reciprocal rights is to essentially "stop the bleeding" at a particular point in time and force the tenant to make a decision to either revert back to paying full rent or terminate the lease. From a landlord's perspective, it is trying to insert a degree of certainty as to when the Benefitting Tenant's remedy will expire and provides a landlord the ability to forecast its financial exposure in the event of a triggered co-tenancy failure.

It is also key for the landlord to insist upon the existence of certain conditions before the tenant can invoke any of its remedies. As a co-tenancy clause is a heavily negotiated clause that addresses the needs of a Benefiting Tenant on a case by case basis, in order to be entitled to any of the remedies, the landlord should insist that the Benefitting Tenant not be in default under the lease, be open and operating its business as required under the lease, and that the co-tenancy right be personal to the Benefitting Tenant. The bargaining strength of the parties will often dictate the secondary provisions that are included in the co-tenancy clause.

REPLACEMENT TENANTS AND REPURPOSING VACANT PREMISES

There have been several references in this paper to the landlord finding a "replacement tenant", but what constitutes an acceptable replacement tenant. Notwithstanding that some co-tenancy clauses may dictate the precise replacement tenant that is allowed to occupy the space vacated by the anchor/major/named tenant, or the co-tenancy clause may provide the type or a category of replacement tenants that the Benefitting Tenant and landlord have agreed to, those listed replacement tenants may not be interested in, or even in existence, when the space becomes available. The economic realities of the day, will dictate what replacement tenants are available, if any. In addition, the larger the space is the longer it will take to actually find a replacement tenant, negotiate a new lease, complete any necessary and required landlord's work and tenant's work to open the space to the public for business. Accordingly, it is generally not advisable for a landlord to box itself into naming or narrowly described replacement tenant(s).

The following are examples of the definition of a "Replacement Tenant" for an anchor co-tenancy that contains language that could be unduly limiting or restrictive when trying to find a suitable and/or available replacement tenant:

> *"Replacement Tenant" shall mean a single department store occupying the entire space formerly occupied by the Anchor Tenant, and which carries a merchandise assortment in terms of breadth of selection and quality of said merchandise which is equal to or better than that carried on by the Anchor Tenant. For clarity, it is agreed that large single purpose stores such as furniture stores, toy stores, or sporting goods stores shall not be considered department stores or a suitable Replacement Tenant, regardless of such store size and trade name, and whether or not they carry merchandise of the same or better quality than was carried on by the Anchor Tenant."*

In the definition of "Replacement Tenant" noted above the landlord has no other option other than finding a department store to occupy the entire vacant premises. When this lease was drafted, the expectation of a single department store replacing a fallen department store was likely not a huge concern. Due to the shift away from the prevalence of the traditional department store, it is much more difficult to find a single department store to occupy the entirety of a vacant anchor premises. The requirement of the replacement department store to sell similar merchandise is an additional obstacle the landlord faces in order to satisfy the requirements of the "replacement tenant"

definition. It begs the question as to why either party would want both the same type of store, with a similar type of merchandise to replace the original anchor that was unable to continue operating in this space. It very well may be an effective or viable solution to do so, however, making it the only possible solution does a disservice to both a landlord and a tenant. Restricting the landlord's options in this scenario deprives both parties from seizing the potential opportunity to better satisfy consumer expectations and generate higher foot traffic.

Another crucial aspect of the replacement tenant definition in section (a) is the requirement that the landlord find a single tenant to occupy the entire of the original space. The requirement for the replacement to be a single tenant, regardless of the specified type of store, dramatically limits the possibilities for the landlord to be innovative with a newly vacated space.

At the outset of the lease negotiations, it is advisable for both parties to recognize the importance of flexibility in the evolving retail market in which they are operating. Once a lease is signed, both parties become bound to a static document. A strong lease is one that remains applicable in a continuously evolving market.

While the landlord is incentivized to attract the best possible replacement tenant that it can find for the vacated premises, in changing times, sometimes a landlord must reconsider the overall tenant mix in a shopping centre that is affected by the departure of an anchor/major/named tenant, and also consider the best use of the vacated premises, which may or may not be consistent with the manner in which an existing co-tenancy clause is drafted. In certain circumstances a landlord may evaluate how it can best satisfy its obligations pursuant to an existing co-tenancy clause and also consider how best to take advantage of an opportunity to revitalize its shopping centre.

The definitions of "Replacement Tenant" are more broadly worded allowing both parties the ability to maintain a level of control while still providing the landlord some flexibility. However, the use of the phrase "retailing tenant" in first example may arguably limit the landlord's options to provide new experiential offerings to consumers. To that end, it is recommended that the landlord and Benefitting Tenant find creative solutions to address the ever-changing retail landscape.

"A Replacement Tenant shall mean: A combination of: (i) a minimum of 1 'big box' retailing tenant in excess of 20,000 square feet, which is consistent with the standards of the Shopping Centre; and (ii) any combination of CRU retailing tenants which are consistent with the standards of the Shopping Centre, specifically excluding discount and outlet style stores, such as Giant Tiger and/or Liquidation World."

"Replacement Key Tenant" means any comparable replacement tenant with similar customer demographics and customer profile, with price points and merchandise of same or better quality than the named Key Tenants then being replaced. Such Replacement Key Tenant shall be subject to Tenant's prior approval, acting reasonably"

In light of the rapidly evolving retail landscape, there is an increased emphasis on providing consumers with unique and different retail experiences. Shopping centres will need to evolve to keep up with rapidly changing e-commerce, which in turn has placed a greater emphasis on landlords and developers to offer experiences to consumers that cannot be achieved online. Rather than handcuffing a landlord by requiring a single tenant replace the anchor/major/named tenant in the whole of a vacated premises, it will be crucial for the landlord and Benefiting Tenant to work together to allow for the vacant premises to be reconfigured in multiple ways that could include commercial retail units and/or major tenant premises and allow for more expansive, creative and flexible categories of uses. The ability of a landlord to re-demise and reconfigure an anchor tenant space is a viable and important way that a landlord can introduce these concepts to its shopping centre. When defined "replacement tenants" are not available, many landlords are now starting to look to backfill vacated premises with other types of tenants and uses, such as, entertainment, various special events, food halls and other food and beverage options, health and wellness, multi-use residential, office, community centres, and retailing options that offer smaller spaces to multiple retailers. In order to offer these new and unique retail, commercial and life style experiences to consumers, both landlords and Benefitting Tenants will have to think outside the box when it comes to filling vacant spaces.

Conclusion

The days of Eaton's, Target and Sears are gone, which means that traditional co-tenancy clauses that require that one large department store be replaced with another large department store is no longer a viable option. There are alternatives however to filling large vacant premises that anchor/major/named tenants vacate. When negotiating and drafting co-tenancy clauses there are a number of considerations that both parties should consider. First, be clear as to the length of time during which the co-tenancy clause will be effective, ie an opening or ongoing co-tenancy clause and who has the benefit of the co-tenancy clause i.e. just the named tenant in the lease and permitted transferees or is successors and assigns as well. Second, clearly describe the existing space and type of tenant that is the anchor/major/named tenant that the Benefitting Tenant is seeking protection over. Thirdly, consider carefully the quantum and timing of the remedies available to both the Benefitting Tenant and the landlord and limitations on those remedies. Fourthly, clearly define and/or describe what constitutes an acceptable replacement tenant(s) and/or use of the vacated space and whether or not the vacated space can be divided up and/or repurposed under certain circumstances.

Ideally, the best co-tenancy clause is drafted in a manner that on the one hand, provides the landlord with a reasonable level of flexibility to fill vacant premises in a shopping centre that has been vacated by anchor/major/named tenant(s), and on the other hand, provides the Benefitting Tenant with a level of comfort that the landlord will attempt to release the vacated space to a defined replacement tenant, failing which, the landlord will have the flexibility to divide and/or repurpose the vacated space to the overall benefit of the shopping centre and the Benefitting Tenant will have rent abatement, go dark and termination rights. At the end of the day, neither party benefits from being boxed in to co-tenancy language that isn't flexible and mindful of current economic forces.

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