

## RELOCATION FROM A LANDLORD'S AND TENANT'S POINT OF VIEW

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### 1. Landlord's Perspective

- Relocation rights are desirable and, sometimes critical, for landlords of all classes of building, whether retail, office or industrial.
- Landlords of office buildings typically require relocation rights from tenants occupying less than a full floor (and sometimes from full floor tenants, but not usually from multi-floor tenants), particularly when such premises are near larger tenants in the building who may be more likely to expand and will want to do so on contiguous floors.
- Landlords of retail plazas or shopping centres want the ability to reshuffle premises' locations to accommodate growing tenants and address the tenant mix.
- Developments are sometimes done in phases or are located on lands that are underutilized. In appropriate circumstances, landlords will ultimately want to make full use of the property, whether, in the case of a shopping centre, by expanding the retail component or adding office or residential components, or in the case of an industrial complex, by expanding existing buildings or constructing new ones.
- When any of the foregoing occur, the landlord may have no intention of terminating leases in the existing project, but rather accommodating growing tenants, increasing density, making better use of existing facilities or diversifying the type of development on the site, and in order to do that, one or more tenants may need to be temporarily or permanently relocated, whether elsewhere in the development or nearby, if the landlord owns or controls other projects.
- If the Landlord knows that relocation could become an issue, and the offer is conditional upon the parties settling the lease, the landlord should seriously consider including the right to relocate in the offer to lease to avoid having the issue spoil the lease negotiation.

### 2. Tenant's Perspective

- Tenants pay brokers lots of money to find just the right space, whether in a high-rise office building for the views, a shopping centre for the street visibility and foot traffic, or an industrial development for the proximity to major transportation arteries.
- As a result, relocation during the term can be a touchy subject and comes with its own set of issues for a tenant.

- If a tenant is prepared to accept a relocation provision, in all cases the tenant should be asking for sufficient prior notice prior to any such relocation occurring – how much notice is reasonable will depend, in part, on the impact relocation may have on the tenant’s business and the preparations the tenant may have to make leading up to the move.
- Whether a tenant is being relocated temporarily or permanently, a tenant will expect the landlord to pay both the cost of moving to and, if only a temporary relocation because of a redevelopment of the building or centre, returning from the relocated premises, as well as to provide a meaningful contribution to installing leasehold improvements in both locations.
- Other issues that typically arise when relocation provisions are being negotiated include:
  - the location of the relocated premises in terms of (as noted above) views, visibility and traffic and proximity to transportation arteries
  - the need to adjust rent to account for the larger or smaller size of the relocated premises (and whether there will be any limits on such an adjustment) – a tenant could argue that it should have to pay less if the relocated premises are smaller than originally bargained for, but not more because the relocated space is larger.
  - whether the tenant will have any obligation to re-use leasehold improvements from the existing premises in the relocated premises.
  - whether the tenant requires any “black-out” periods, during which any such relocation cannot occur, to eliminate or minimize material down-time, e.g. over a busy selling period in a retail context.
  - the tenant may also want the right to terminate its lease if the space to which the landlord proposes to have it relocated is not acceptable and receive payment on account of the unamortized portion of the tenant’s improvements in its existing premises.
- If the offer is not conditional upon settling the lease, then it would be prudent for the tenant to provide in the offer to lease that relocation will not be permitted, to at least have an opportunity at a negotiated resolution of any relocation issues, if the landlord insists on including such a provision in the lease.