

Don't Get Spaced Out: Know the Size of Your Leasehold

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Most prospective tenants look at potential leased premises to determine if that space will comfortably accommodate their business operations. The number of desks, cubicles, offices and storage areas are closely considered. This is the space that will be used during their tenancy; hence the term “usable space”. But what of the lobby, the restrooms, the corridors and the stairwells – each tenant uses that space as well. Then there are pillars, elevator shafts and mechanical rooms – these are not “used” by tenant. All of the items mentioned above take up space, and you can be certain that whoever is leasing that space is trying to figure out a way to get the tenants to pay for all of it. Of course, there is absolutely nothing wrong with that, but it is critical that both parties to a lease recognize how much space (usually represented by a square footage amount) they are paying for and how that amount is determined.

The space size that is finally established by the parties is critical for many reasons. Some very obvious, such as when rent is determined on a per square foot basis or the calculation of pro-rata share for expense obligations, and some not so obvious, like the value of a sublet. (For example, if you want to sublet 50% of your 10,000 square foot space and the subtenant tells you it is only 4,000 square feet that can be embarrassing – and costly.)

Know the Loss Factor

In every case there is a certain amount of leased space that cannot be used, the percentage of usable space to rentable space is called the loss factor. Knowledge of the loss factor percentage is important when comparing rents from one building to another. Cost per square foot usable is much higher for a building with a 10% loss factor compared to a 20% loss factor.

How to Determine the “Real” Size of Your Premises

There probably is no “Real” size, but that doesn't mean the parties can't agree on the size of the space. The most important consideration in order to get a mutual understanding with respect to the size of the space is to get a very specific determination of how to measure the space. The most common method of measuring rentable/usable space for multi-tenanted office buildings (where errors most often occur) is the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) Standard. But be careful, the Standard has been modified on several occasions. Between the 1980 Standard and the 1996 Standard, loss factors that were originally 10-15% may be increased to 15-20%. Choose your standard wisely, but more importantly be consistent, and specific as to how you want to measure that space and which Standard will be used. Make it a lease requirement.

Who Decides

In the event that there is some doubt a Lease should always allow for space to be verified by the tenant's certified architect, using the agreed upon standard. Once the parties are satisfied that the premises size is "accurate" that size should be used consistently through the term (barring contraction or expansion of the premises, of course).

What about the Building

Similar precaution should be observed with respect to the size of the building. After all, the tenant's share of CAM and Operating Expenses will be determined based on premises compared to the building. If possible, determine your pro-rata share (premises rentable square footage/building rentable square footage) at the outset, but do not allow for a reduction of the building rentable square footage for purposes of that calculation.

The most important consideration with respect to space size is make certain that both tenant and landlord have the same understanding as to what that means, how it is determined and that those considerations are clearly spelled out in the Lease.

*"Anthony Collura has been with **CRS** for over 15 years and has over 20 years of experience in internal auditing, asset and revenue accounting and financial management."*

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