

A Tenant's Guide to Leasing Commercial Property

By [Jon Condrey](#)

It seems that the new space decision affects almost all aspects of operations and yet most companies have very few managers with experience in coordinating a company relocation and negotiating a facilities lease. Nonetheless, every few years companies must either relocate or extend their existing lease and face landlords with far more experience with commercial real estate. *A Tenant's Guide to Leasing Commercial Property* is designed to help level the playing field for tenants by calling out common pitfalls to avoid, and processes to pursue that can help tenants make commercial property leasing decisions with confidence.

The commercial property lease is typically one of the larger corporate expenses and one of the more important, visible decisions a management team or business owner can make. The most common mistake companies make during this time is attempting to avoid disruption to the business by not involving enough company stakeholders and department heads early on in the real estate site selection process. This tends to backfire causing the company to have to scramble to build internal consensus for what to do next as deadlines approach. Failing to define operational space requirements early on can lead to suboptimal results, unnecessary disruption, and unmet expectations.

Over the last 15 years of being involved in what must be 1,000 lease negotiations, relocations, and renewals of existing leases for tenants, I have seen many train wrecks and many successful real estate projects that were completed on time and on budget. To minimize disruption and to get started on the right foot, here's a sequential process and program that has worked time and time again for most companies facing a relocation or lease renewal:

1. **Think holistically about real estate and how it impacts your business.** Many companies have a business plan and ideally your company's real estate commitments should be aligned to it as closely as possible. Real estate commitments are typically long in duration and therefore business leaders must try and anticipate the future needs of the business. The most common pitfall business leaders make is either not taking enough space to create a little wiggle room for the business, or take far too much space for growth initiatives that never panned out. Many leaders use a company move to refresh the business, reset expectations, improve moral, recruit new employees, and put the company in the best possible position to succeed. If you are managing a startup, your task is even more difficult as extreme flexibility is paramount as you may have no idea how your business will unfold and the space you will need. Here's a survey and real estate decision matrix you may wish to use early on with your management team to build consensus for directing your real estate site selection process.

Real Estate Direction Matrix

Number	Site Selection Criteria	Relevancy Ranking
1	Preservation of existing employee commute patterns to work	
2	The monthly rental rate	
3	The total size of lease obligation	

4	The total up front cost of moving into the space	
5	Building “curb appeal” for visitors or customers	
6	Suitability of the interior layout in meeting business and employee expectations	
7	Flexibility of the space for the future growth of the business	
8	Proximity to amenities such as restaurants, gym, childcare, etc.	
9	Locating to the best area for recruiting purposes	
10	Data and telecommunications services available to the building	

2. **Define your exact space requirements early.** Using a few sample available properties that meet most of your operational requirements (if possible), have your furniture dealer and other equipment vendors help you layout the space to your specifications. Many vendors will provide this service for free in hopes of obtaining your business later on. This will help to flush out the size of the space required now and into the future as you plan for headcount and other potential changes.
3. **Obtain solid broker representation.** Commercial real estate is immediately complicated with many moving parts. Retain yourself a good broker to work with as early on as possible to help navigate and position your requirement in the marketplace. You are not obligated to pay a fee (the broker’s fee is paid by the landlord) and you are not going to get a better deal on your own much less find the best building to house your company. There are numerous reasons why a tenant should use a broker representative, and no reason not to. The landlord has a vested interest in obtaining the highest rental rate and best deal possible regardless if you have a broker or not, and without using a broker tenants are forced into working with the landlord or the landlord’s agent to coordinate the lease by default. These people have far more experience negotiating lease transactions than most tenants and since you are going to get brokered one way or another, you might as well have your own advocate. Plus, brokers track all the spaces available in a market and can cut out a lot of unnecessary cycles for business owners and executives. They can also help you avoid unscrupulous people and buildings with known issues.
4. **Put together a preliminary moving schedule.** Don’t wait until the last minute to start looking for space as it always takes longer than you think to negotiate a lease and to equip a new facility for operations. You don’t want to be rushed through the process and forced into making hasty decisions because of some pending deadline like the end of an existing lease with costly “holdover” provisions. Create a move timeline or schedule with your broker to work against. Start the timeline with defining the space requirements, coordinating initial tours, term sheet negotiations, due-diligence, legal review, interior design, building permits, procurement of equipment and services, construction periods, and the furniture assembly and fit-out. Generally, the larger the space needed and the more tenant improvements involved, the earlier you need to start looking. As a rule of thumb if there is heavy construction involved than plan on looking about 12 months in advance. If the space requirement is small and no construction is involved, start looking for space 90 days in advance of when you need it. If some construction is potentially involved, start looking at least 6 months in advance.
5. **Obtain preliminary approvals to proceed.** Work with your broker to tour recommended properties and short list the best options. Run a detailed financial analysis for each building based on assumptions validated by your broker, building contactor, furniture dealer, and others required in moving, equipping, and operating each building. If necessary, meet with your management team to obtain their feedback and commitment to proceed based on the various scenarios presented. This will quickly weed out the

type of spaces and buildings you should go after and why. This is also a good time to refer to earlier space surveys conducted early on and to your established moving schedule and timeline.

6. **Start the RFP process.** Instruct your broker to prepare a request for proposal (“RFP”) for each building owner on your short list. So that you are taken seriously in the marketplace, only choose buildings that you would realistically move into if adequately motivated to do so by the landlord. Your RFP should include the following basic business points among other things:
 - the length of lease you will entertain
 - how the space is to be delivered by the landlord at the landlord’s sole cost and expense
 - proposed occupancy date
 - leasing concessions such as free rent, a tenant improvement allowance, moving cost allowance, furniture allowance, early lease termination provisions, etc.
 - a “drop dead” date for the landlord’s response

Note that not all tenants need to go through the RFP process. If your requirement is small, the choices few, and the dollars involved not that substantial, many tenants and landlords prefer to move immediately into term sheet negotiations. Your broker will have a feel for how to do and hopefully put your company into a position where it is negotiating on a few properties in parallel to get the best deal.

7. **Start lease negotiations.** With hopefully attractive lease proposals in hand from one or more landlords on your short list, work with your broker to put together non-binding counterproposals (term sheets) based on market conditions and RFP responses received. Rely on your broker for guidance on what levers to push, and how to be aggressive with each landlord without being ridiculous. Consider needed flexibility such as early lease termination provisions, expansion options, and automatic renewal options to incorporate those into your proposals. If there is a considerable amount of construction involved and other leasehold improvements, it would be a good idea to develop your own tenant improvement budget to help guide negotiations.
 - After reviewing responses back from the various landlords to your counterproposals, it is time to get your senior management together and review proposals to determine the finalists based on you and your broker’s recommendations. Update earlier financial models and be prepared to address a series of questions regarding anticipated costs, risks, rewards, and why these buildings are better than any of the others you looked at or received proposals on.
 - Prepare your final and best non-binding counterproposal(s) asking each landlord to include a draft lease with its response. If you like one building more than any of the others (this happens most of the time) you should consider asking the landlord to take the building off the market as you negotiate a lease in good faith. Obviously at this point you only want to be negotiating on buildings that you can realistically move into on time and on budget. The counterproposal stage may go a few rounds and include verbal negotiations. Work with your broker to ensure that you have an executed non-binding term sheet that the parties can rely on to review the lease against.
8. **Obtain legal assistance.** Using the final term sheet, engage your attorney to help with the review and negotiations of the lease document. Use your broker and attorney to determine what is “market” and what to push for. Depending on the size of the lease commitment and dollars involved, you may wish to cap your attorney’s hours and involvement. Gather your broker’s concerns with the lease and determine how best to communicate your concerns to the landlord. Usually a conference call with all

parties involved is best after initial lease comments have been distributed. Where should you focus your energy? The following lease terms are important and should certainly be reviewed and understood clearly:

- the base rent and rental escalations if any
- all expenses associated with operating the building and who pays for what expenses
- who handles building repairs and how those expenses are paid for
- the treatment of future capital improvements
- the payment of real estate taxes and insurance expenses
- the tenant work letter and how the building and space will be delivered to the tenant
- building use provisions including rules and regulations
- sublease/assignment rights
- tenant audit rights with respect to building expenses passed through to the tenant
- determining fair market rent for options to extend the lease term

In many cases tenants will elect not to use attorneys for small leases. If so, pay attention to the above clauses and make sure you are dealing with a highly reputable landlord.

9. **Complete your due-diligence.** As you work through the lease document, it is time to carefully review the condition of the building you may end up living in. How much due-diligence to apply is often dictated by the total size of the financial commitment involved, the lease structure (triple net or NNN, gross lease, or full service lease), the age of the building, and the warranties available. For example, if the lease structure is triple net (NNN), which forces the tenant to be responsible for the electrical and mechanical systems servicing the building and the roof membrane, it is important to inspect the building similarly to how home owners conduct inspections of the homes they purchase. If you are the single tenant or about to take on a lot of space, you may wish to have the roof inspected or see if has recently been inspected and what the outcome was. Determine if the roof leaks, the useful life remaining on the building systems, and if the building has been well serviced or if there is deferred maintenance. If the building is occupied you can certainly talk to the tenants and see what they have come to find. If you are planning structural changes to the building and other improvements that will involve permitting, be aware that these will trigger an audit of the building by the city municipality to determine if the building has all the necessary life/safety equipment and is in compliance with other building codes. Make sure to understand what will be required to obtain approved occupancy status, and who is going to pay for what if code compliance issues are triggered by planned work to the building.
10. **Work in parallel with vendors to move into the building on time.** Ideally you want to shut down on a Friday at your current location and open on a Monday in the new location. To do this you will have to plan ahead to avoid painful disruptions and delays. While negotiating the lease document and completing your due-diligence, you will likely need to set into a motion a series of events so that you can move into the building on time. This might include provisioning telecommunications and data circuits, selecting contractors, receiving bids for work and equipment, generating quotes from furniture dealers, and arranging for the provisioning of various services. Put yourself in a position to pull the trigger on multiple decisions in parallel working down to granular details such as ordering business cards, changing your mailing address, updating your website, and sending out “we have moved” announcements to your customers and their billing departments.

Finding and securing the perfect building for all the right reasons is obviously the goal here, but sometimes that's not always possible and in fact most of the time, it is not. Concessions are often required and expectations reset after finding out that what you want in a perfect world, just isn't possible. Make these adjustments early and your site selection process will go much smoother as a result.

Clearly this guide doesn't pertain to everybody and for the smaller leases very little of it is applicable as the dollars involved just isn't worth the drama of a lengthy lease negotiation. I hope this guide serves you well and we appreciate your use of BuildingSearch.com.