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Building Scene

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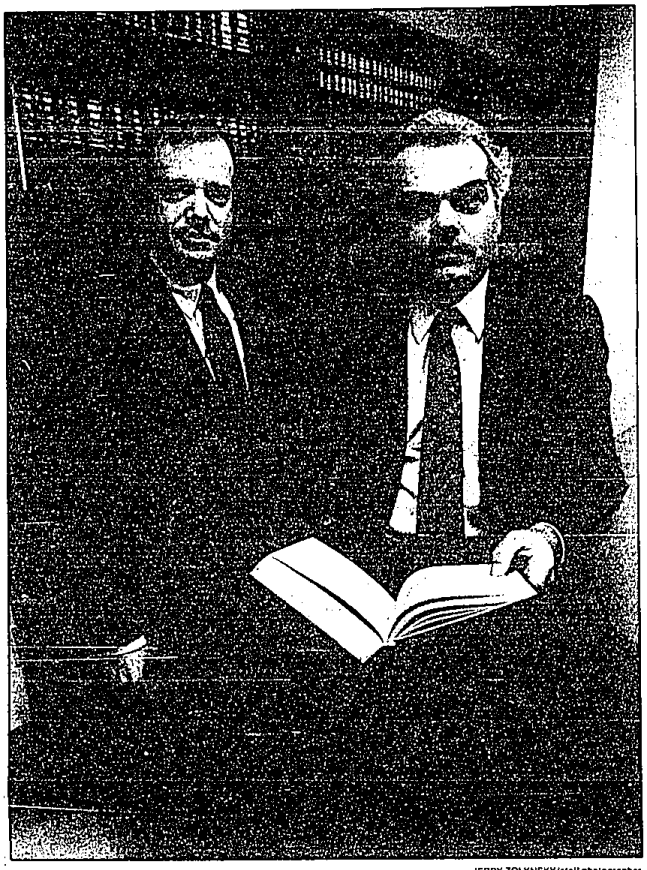

JERRY ZOLYNSKY/staff photographer

Lawyers Richard Schloss (left) and Tony Trogan advise clients that failure to understand a lease's fine print could lead to hefty repair costs, court proceedings or eviction.

Retail leases a mine field for unsuspecting

By R.J. King
staff writer

When Jimmy Hoffa sat down to discuss a proposed labor contract, his first act was always to accept the document and then immediately throw it in the wastebasket.

His reason? It never pays to work from the other guy's paper.

But if a prospective tenant interested in leasing retail or office space tosses the landlord's document aside, the sidewalk may be the only place left for the tenant to conduct business.

Before signing a lease, tenants are advised that some leases contain mines waiting to be triggered by carelessness or bad luck, and a company's failure to read and understand the fine print could lead to hefty repair costs, court proceedings or eviction.

"In large shopping malls, it is often common for a prospective tenant to be handed a lease 45 to 50 pages long, and there's no telling what can be buried in there," said Rich Schloss, a partner with the Bingham Farms law firm of Weisman, Trogran, Young & Schloss, which specializes in commercial law.

"Everything may appear to be in your interests during the lease discussions, and then the landlord says there's a required form to sign, and hidden in there is a relocation clause where a tenant can be relocated at any time, and at the tenant's expense."

LET THE TENANT beware is Schloss' message.

"It doesn't mean the client couldn't do it (investigate a lease) themselves," Schloss said from his firm's fourth-floor office. "But often times they're not objective."

Tony Trogran, a partner with the firm, explained standard leases for shopping mall space often contain a barricade fee, calculated by the linear foot, for installing a wall to mask remodeling work from the eyes of passing shoppers.

"Unfortunately, the tenant never makes the calculation and up jumps the devil," Trogran said. "For one of our clients, the cost would have been $8,000. In this case, the landlord did waive the fee, but in some instances, the barricade is already up, so you have to watch out."

A tenant's better judgment can go out the window during the rush to open a business, Trogran added.

"Sometimes a tenant will get emotionally involved or fall in love with a certain location, and he agrees to funny things, which he'll probably kick himself later for."

In another instance, some 30 tenants of Tally Hall were greeted by eviction notices last December when the food court was being closed to make way for an F&M health and beauty aids store and other retail shops.

"Tally Hall was a real good example of a bloodbath situation," said Trogran. "The food concept wasn't working and the landlord wanted everybody out. But long before that the landlord took every opportunity to declare default, using such devices as rent delinquency and a mild attitude toward garbage pick-up to terminate leases.

"It was also a dangerous situation for people who bought into a lease at the tail end of the term. People put a lot of money into starting up a stand-up restaurant assuming the lease would be renewed, and then found out the landlord's plans were much different from theirs."

Robert Schostak, vice president of Schostak Brothers and Co., Southfield, did not return several phone calls in connection with this article.

"In a case like Tally Hall, the only way a tenant can get any remedy is to tough it out," Trogran said. "We represented four clients over there, and each of them received a cash settlement from the landlord. It was just a perfect example of how a tenant can get into trouble."

First opened in 1980, the firm has seven attorneys on staff. They have worked in mergers, acquisitions, estate planning, real estate, bankruptcy and commercial and corporate law.

Schloss declined to name clients, but said the firm represents a wide range of businesses from individual professionals and small retail shops to medium-size manufacturers and Fortune 500 companies. In 1988, revenues were $1.8 million. This year, the firm projects revenues of $2.5 million.

In selecting an attorney, the client should never shy away from asking for an estimate and references, Schloss added. As a rule of thumb, fees can range from $100 to $300 for a lease covering a small area of rental space to $10,000 and up for larger stores in shopping malls.

But even for a lease covering just 300 feet in a large complex of offices, the landlord might have tucked away in the lease a provision making the tenant responsible for the whole facility if it burned down, regardless of blame, he said.

Leasing caveats

Prospective tenants can protect themselves from pitfalls in commercial leases by consulting a lawyer or by negotiating safer alternatives.

Below is a list of common charges and restrictions that often are contained in a lease, according to the law firm of Weisman, Trogran, Young & Schloss. Common advice is to negotiate your position and look elsewhere if discussions fail to accommodate your interests.

- Relocation clause: A landlord may stipulate in the lease that eviction can come at any time and for any reason with the tenant paying the bills. Be sure the landlord picks up most of the costs of relocation.
- Kick-outs: In some cases, the landlord may require a retail tenant to maintain a certain volume of sales and if the sales figures are not met, request that the tenant move out. Try to keep the figures within reason.
- Radius restriction: If a landlord owns a great deal of retail property in one area, he may request that the tenant refrain from opening a competing outlet in a certain, predetermined radius (usually five to 20 miles). Negotiate to keep the radius as small as possible.
- Hidden costs: In cases of remodeling, the landlord often will require the tenant to hire an architect. The landlord also may hire a supervising architect to approve work, and in turn charge the tenant for all costs. Always question any costs or fees.
- Use clause: Restricts tenants from selling certain items in their store. For instance, in a shopping mall, a jeweler may not sell watches in order that a watch shop next door isn't put out of business. Always look long-term and try to keep merchandise restrictions to a minimum.
- Building allowance: Opening a new store can be expensive as remodeling costs can reach four and five figures quickly. Always inquire whether the landlord will pay for any improvements, especially in instances where property is not fully leased.

— R.J. King

Information age requires new workplaces

By Marilyn Fitchett
staff writer

David Lathrop defines "old work" as NTG — "nose to the grindstone."

He defines "new work" as TLC squared — "thinking, learning, creating and communicating."

"Old work," when an employer knew his employee was working because of the number of widgets he produced, is just about gone. Today, "new work" efforts are more likely to result in an "intangible product," such as an idea.

The challenge then for office designers is to provide an environment that facilitates the methods of the "new work" — communication, concentration and teamwork.

That was the message Lathrop delivered when he addressed a seminar, sponsored by Contract Interiors for its customers, Wednesday at the newly opened Standard Federal Bank building in Troy. Lathrop is a senior analyst in the advanced marketing group at Steelcase Inc., the Grand Rapids office furnishings manufacturer.

"We have to try to bring the changes into a logical focus," Lathrop said. "We have the opportunity of doing a better job of patching together reality and understanding the future."

LATHROP ADVANCED the theory of Frank Becker of Cornell University, who said a company falls into one of three categories based on its use of offices.

"During the course of organizational growth and change, the idea of how we manage facilities goes through three different phases."

The first phase, the "loose" phase, is during a company's startup, when the owners are "not the least bit concerned with the facility. They take no control," Lathrop said.

The second, or "tight" phase, occurs after company has grown.

"The company becomes concerned about vast resources it has tied up in its assets, in its facilities," Lathrop said, noting that Union Carbide has 25 to 28 percent of its total capital assets in facilities.

"That's staggering. Are those assets working for you? Are those assets making profits for you? So we institute facility management to develop a good handle on what's going on."

THE THIRD phase is elasticity, when "you control what you need and don't bother with the rest.

"Very few are doing this. When we have 25 percent of our assets tied up in facilities perhaps we get to the point of controlling things which are dysfunctional to control.

'We have the opportunity of doing a better job of patching together reality and understanding the future.'
— David P. Lathrop, Senior analyst, Steelcase Inc.

"It bears some consideration on our part when we have begun to manage more than we need to manage and whether we can back off a little bit and allow people to have some control of their personal work areas.

"Maybe there's some room in that elastic area to allow work environments to come back under the control of people while not compromising the values of 'tight.'"

LATHROP PARTICIPATED in the discussion that preceded the design of Steelcase's newly opened Corporate Development center and explained how the building aims to support work activity.

"The idea of a work setting is that in the information age people don't just do work that can be easily accomplished in one kind of setting.

"So we provided different kinds of settings which were designed to facilitate different kinds of things."

Constitutionality of condo law in question

condo queries
Robert M. Meisner

As a co-owner, I am concerned about a recent change that the legislature adopted which allows condominium associations to change their documents by obtaining two-thirds of the co-owners approval, even though the documents themselves call for a higher percentage and, in some cases, 100 percent. To me that provision seems unconstitutional and unreasonable since I bought with the expectation that these documents could not be changed unless a supermajority is obtained. Is this law constitutional?

There are many attorneys who believe that the recent amendment to Section 90 in the Condominium Act is unconstitutional and ill-advised.

While it was ostensibly passed in order to assist certain associations who have difficulty obtaining 100 percent approval to amend certain parts of the condominium documents, the section is also subject to abuse in that certain vested rights of co-owners may be taken away that were guaranteed to them under the documents when they purchased their condominium unit. Also, there is a serious question as to whether the statute as passed affects any condominiums that were established prior to July 1, 1978 under the original Horizontal Real Property Act.

This issue will no doubt be litigated in the near future since it results in significant ramifications to condominiums associations throughout the state as well as their attorneys. Those attorneys who want to unequivocably tell their clients that this statute is applicable to their condominium associations may best be advised to make sure that their malpractice insurance is up to date.

We are a homeowners association and are having problems with the builder across the street who wishes to build a large commercial shopping center. We are wondering what efforts can be undertaken by us with respect to blocking this matter and whether, in your experiences, you have any suggestions on what is the best course of action.

Hopefully, your homeowners association is sufficiently well funded to engage in litigation, if necessary, in order to block the commerical enterprise if you have a legal basis to do so. Of course, your primary focus should be on the political ramifications of the commercial enterprise including whether rezoning is necessary, and whether a site plan has been approved by the municipality with respect to the developer's project.

Get your homeowners to attend meetings of the planning commission or another relevant agency to express your opposition to the site and to meet with the developer of the site with the benefit of counsel to see whether any negotiations can lead to a resolution of the dispute. Finally, if all else fails, consider legal proceedings, if appropriate, to preserve your rights and interests.

Robert M. Meisner is a Birmingham attorney specializing in condominiums, real estate and corporate law. You are invited to submit topics which you would like to see discussed in this column, including questions about condominiums, by writing Robert M. Meisner, 30200 Telegraph Road, Suite 467, Birmingham 48010. This column provides general information and should not be construed as legal opinion.