

CAM AND PROPERTY TAX AUDITS: The Modern Day Litmus Test for Landlord Integrity

By Jim Hochman & David Liebman, SIOR

The so called “audit clause” is an extremely important part of any lease where a tenant is responsible for a portion of CAM (common area maintenance expenses) and property taxes. Some landlords are scrupulously honest and meticulous in their accounting to- and billing of- tenants for those expenses. This is good business. Highly regarded landlords attract tenants to their properties based on their integrity and sound management practices. Then, there are other landlords, those who bear watching. The question, then, is how do you identify the so-called bad, greedy, or merely sloppy landlords? One good approach is for a tenant to insist, yes, I said insist, on a fair audit clause.

1. The right to audit – the tenant must have a right to audit the landlord’s computations and allocation of CAM and taxes. Blind acceptance of the landlord’s calculations is at best, troubling, at worst, negligent.

2. The time to audit – A tenant should have a reasonable time after receipt of the landlord’s annual reconciliation statement in which to request, receive, and revise the landlord’s annual statement of bills and receipts. That time period may depend on the size of the property, the property’s number of tenants, and other factors. If a landlord

wants to limit the tenant’s time to less than 60, even 90 days for audit after receipt of the reconciliation statement and backup, you should begin to worry about the landlord.

3. Who may audit? If a landlord wants to limit the tenant’s audit rights by requiring the tenant to use either a large accounting firm, a CPA, or even to prohibit a contingent fee paid auditor, worry even more. This landlord hopes to discourage the tenant from exercising its audit rights.

4. What are the consequences? Unless your audit clause has some “teeth,” meaning unless your audit rights provide for the tenant to recover both overcharges and the cost of the audit, you are merely spinning your wheels, and you are probably dealing with the wrong landlord. You should insist (yes, there’s that word again) that if a landlord overcharges a tenant by a fixed percentage (aim for 3 percent, perhaps settle at 5 percent), the landlord pays for, reimburses, or credits the tenant for the tenant’s audit costs. If a landlord or its property manager misses accurate accounting by that margin or more, that landlord should suffer the consequences. If there is any push back from a landlord on this point, I hope time allows

you to select a different location and a different landlord.

5. Confidentiality. If a landlord in a multi-tenant property grudgingly accepts an audit clause, and finally allows a tenant the right to recover its audit costs in the event of overcharges, but insists that the tenant and its auditor keep the results confidential, what message does that convey? That landlord, with his fingers caught in the proverbial cookie jar, has an even greater fear than getting caught. The greater fear is getting caught by multiple tenants and making refunds to multiple, even all, of the tenants.

6. Conclusion. Your landlord wants to bill tenants for management fees, either its own internal management division (likely a profit center in itself), or a third party management firm. Tenants should expect to pay for competent professional property management. That service must include accurate accounting for CAM and taxes and accurate allocation of each tenant’s correct share of those expenses which per the lease, are included. Run, do not walk, yes run, from any landlord who resists a fair audit clause with teeth. That is your best litmus test your best early assessment of the integrity of a prospective landlord. ▼