

# The Ownership and the Property Manager

**T**he property manager is appointed by the owner to oversee the operation of a building. His or her traditional role is to create and enhance value on the expense side of the building through efficient management.

If you've been given the additional responsibility of leasing, then you'll create value by increasing the income of the building.

## Key Concept

### Roles

A property manager's job is defined by the ownership in your employment agreement. The typical roles usually include:

- ▷ collecting rent
- ▷ making bank deposits
- ▷ conducting retail tenant audits
- ▷ supervising maintenance services
- ▷ coordinating a security program
- ▷ initiating a marketing program
- ▷ coordinating leasing activity
- ▷ maintaining tenant and public relations
- ▷ supervising property management staff
- ▷ monitoring all insurance lease requirements of tenants
- ▷ challenging property tax assessments
- ▷ overseeing tenant improvements
- ▷ making regular reports to management

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- ▷ developing a working relationship with the owner's attorneys (more on working with attorneys in Chapter 11)
- ▷ enforcing provisions of the lease

## Understanding the Ownership and Its Goals

If you are interviewing for a position as a property manager, or undergoing an ownership change of the property, and part of your job is to now market and lease a piece of commercial property, then what do you need to know to help you decide if you can do the job?

That answer is simple: find out what results the ownership structure wants to accomplish. For example, does the owner want the property fully leased within six months, debt retired in two years, the building sold in five?

Knowing what is wanted will help you determine whether or not you can develop a strategy to get results.

The easiest way to get that information is to ask the ownership when you interview for the job. We'll talk more about your employment relationship with the ownership later in this chapter. For now, you need to learn the goals for the property.

## What a Property Manager Needs to Know

**A**s a property manager, you need to know many things in addition to the mechanics of the job. For example, what is the building's history, how profitable has it been, and what are the objectives of the ownership? If you are preparing for a job interview, the following series of questions may be helpful in getting this information from the ownership. **Figure 1-1** is a sample list of questions that you should ask an owner during an interview. Don't overlook trying to find out about the length of time your predecessor had the job and the reputation the ownership has in the brokerage community.

### Sample Lease

Enforcing lease provisions is addressed on page 12-36 of the sample lease in the appendix of Chapter 12.

### Information

Visit [www.pikenet.com](http://www.pikenet.com) to learn about the latest trends, tools, and resources in the real estate industry.

### Key Concept

### Information

BOMI Institute's *Asset Management* course can equip you with the tools you need to assist the property's asset manager or CFO in reaching a decision.

- ▷ Be aware that to avoid being penalized for ambiguous language, some attorneys try to circumvent general contract rules by including a Catch-22 lease clause, saying there is “no presumption against the drafter in the event of controversy.” Judges may disregard this clause because it may be a legal trick to get away with hoodwinking somebody or an excuse not to be penalized for sloppy legal work.

Caution: If you are trying to save on legal fees related to drafting a lease:

- ▷ Don’t assume clauses in generic preprinted lease forms bought at office supply stores are legally valid in every jurisdiction.
- ▷ Once you have a signed lease that’s been crafted by an experienced attorney, you might be tempted to use it as a master lease for other tenants. Be careful! Before saving a lease, get your attorney’s approval (some lawyers treat their leases as intellectual property and have lease documents copyrighted). In some states you can keep a copy of a master lease in the word processor of your own computer, fill in the blanks, and give it to your attorney for review. In other states, however, you are not allowed to fill in the blanks at all. And don’t forget that each building you manage will require specific tailoring of the lease to adapt it for that particular property. These changes may include revised clauses pertaining to additional rent, escalations, CAM charges, and so forth.

## Facts Needed in a Lease

Leases need to contain a significant number of facts that must be presented in certain ways. Here are some of the obvious and not so obvious structural elements that need to be in a lease.

- ▷ **Name of parties:** Are the names of the landlord and tenant correct and properly spelled? Formal corporate names must be used, not “trading as” or “doing business as” names.
- ▷ **Signature blocks:** Are there signature lines for the landlord and each tenant? Are the signature blocks set up correctly with a signature date? Has each signature been dated?
- ▷ **Blanks:** Are all appropriate blanks filled in or is “none” or “not applicable” inserted?
- ▷ **Deletions/amendments:** Have all parties initialed every deletion and amendment?

- ▷ **Attachments:** Are all the attachments that are referenced in the main body of the lease agreement attached? Are they clearly identified exactly as they are referenced? For example, if the body of the lease agreement refers to an “Addendum,” the attachment should not be called an “Amendment.” (Different types of attachments include addenda, amendments, exhibits, and riders.)
  
- ▷ **Accompanying documents:** Are the documents referenced in the lease, or required by the landlord, included with the lease? Such documents can include a lease guaranty, the tenant’s financial statement, or a lease summary sheet.
  
- ▷ **Lease date:** Is the lease dated? What is the rent commencement date? Is the term of the commencement of the lease clearly defined?
  
- ▷ **Legal description:** Does the lease contain a legal description of the property and a common name and/or address of the property?
  
- ▷ **Rental rate and other terms:** Does the lease agreement clearly identify the rental rate, basic terms of payment, escalations, CAM fees, expense stops, and all other monetary matters?
  
- ▷ **Special provisions:** Are there any special provisions or amendments that must be included?
  
- ▷ **Federal, state, and local requirements:** Does the lease agreement comply with all specific requirements of federal, state, and/or local laws, codes, or regulations, as well as any recently enacted or promulgated amendments? Your attorney may know about certain local laws to which the lease must conform. On a federal level, depending on the situation, there may be the need for language dealing with OSHA hazardous material disclosure or ADA (Americans with Disabilities Act) compliance.
  
- ▷ **Social Security number, Federal ID number, and SIC (Standard Industrial Classification) Code:** You need these numbers to track personal or company dollars, as well as any environmental infractions.

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### Information

To find out more about OSHA regulations, refer to [www.osha.gov](http://www.osha.gov).

## Lease Clauses

Leases are composed of sections of words called clauses, which cover specific subjects. Some clauses in a lease are often referred to as “boilerplate” because, like plates riveted over the tubes of a boiler, they bind together all the clauses that make the lease a legal document.

**Lease clauses.** Sections of the lease that address specific issues.

If there is no renewal clause, then the lease expires at the end of the term. Lack of a renewal clause does not mean that the tenant wants to move because, all things considered, it's probably cheaper for the tenant to stay.

### Key Concept

## Renewal Clauses

If there is a renewal clause, it is negotiated before the lease is signed. The renewal terms and conditions are usually agreed to in either a clause or an attachment to the lease and are an option the tenant may exercise under certain conditions. The renewal option does not have to state what the rent payments will be, but it can contain language stating that the payments will be negotiated. If the rent amount is stated, then that is another concession to the tenant. Usually, if the rent is higher than the market rate at the time of renewal, then the tenant will not exercise this option. If the rent is below market, then the tenant will exercise the option, and you will lose the chance to increase the building's income and value.

The conditions under which the tenant must give the owner notice of intent to exercise the option are the most important part of the renewal clause. Often this requires the tenant to give written notice between three months to a year before the end of the lease. (Typically, notice is shorter for smaller tenants and longer for larger ones.) This does not, however, prevent the owner from approaching the tenant prior to the stated dates to negotiate a renewal.

If the tenant fails to give proper written notice under the terms of the renewal clause, then the owner may consider that the tenant waived the right of renewal. The owner is not under any obligation to ask the tenant if it is interested in renewing. Under certain circumstances, which will be discussed later, it may be in the owner's interest to allow the option to expire and thus regain control of the space.

Language in the renewal option usually includes a methodology for negotiating the rent. Typically, once the tenant gives notice of intent to renew, then the owner has a specified number of days in which to respond with a proposed rental rate. Then the tenant has a specified number of days to accept or reject it. In the event that the tenant rejects it, then both owner and tenant will negotiate during a specified number of days. If both parties fail to reach an agreement within the specified number of days, then the renewal option will terminate. One way to avoid this, if it is agreed to and included in the renewal clause, is to appoint one or more real estate brokers to determine the market rate.

## It's Cheaper to Keep a Tenant

It is cheaper to keep a tenant than it is to find a new one, depending, of course, on the circumstances and market cycles.

In a tight market, an owner can be selective and demanding. In a soft, or overbuilt, market, an owner cannot afford to lose tenants (unless they are not paying the rent). Tenant retention in a soft market is important for many reasons, including the following:

- ▷ The space may sit empty and not yield rent for a long time.
- ▷ A prolonged vacancy will have an effect on the present tenants and their renewal negotiations.
- ▷ Considerable expense and effort will be involved in marketing and advertising to find a replacement tenant.
- ▷ Free rent and other inducements may be required to secure another tenant.
- ▷ The rental rate may be lower than the present one.
- ▷ The owner may have to pay to remodel the space to meet the specifications of the new tenant.
- ▷ The owner may be required to pay a brokerage commission.
- ▷ The new tenant may not be as reliable in paying the rent as the previous one.
- ▷ The new tenant's employees may create more wear and tear on the space and the common areas.

### Why Tenants Are Reluctant to Move

Satisfied tenants are usually reluctant to move. Here is a list of some of the factors the tenant must plan for in the event of moving.

- ▷ spending time to view new space with brokers and agents
- ▷ committing time and paying legal fees to negotiate a new lease
- ▷ overseeing construction of the improvements agreed to in the new lease
- ▷ coordinating the logistics of moving to minimize business disruption