

Tenancies move toward more sustainable models

Benefits of a green lease include reduced environmental impact, energy savings and tax incentives



LEGAL EASE

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“Green leases” are those that address increasingly important and visible sustainability issues. As a result, the use of green leases is expected to become more common.

Tenants in today’s market want sustainable, energy-efficient properties. Green leases help maximize the sustainability benefits of a property, whether a newly constructed or existing building, and help tenants and landlords achieve both sustainability and business goals.

Potential benefits of a green lease include reduced environmental impact, energy and cost savings and tax incentives. For tenants, operating a sustainable business, in part made possible by a green lease, can result in positive marketing buzz and recognition in the community for exhibiting environmental responsibility. For landlords, offering green leases can reduce vacancy rates and tenant turnover, and create a favorable reputation in a competitive marketplace.

What is a green lease? This idea is relatively new, and the commercial real estate world has not reached a consensus on a definition. Put simply, a green lease is a document that integrates sustainability objectives into the leasing process and occupancy of the tenant space. Entering into a green lease is about more than just the rent, lease term and other commercial elements; a green lease encompasses the entire commercial leasing process.

There are two major paths to achieve green objectives in a green lease.

First, a green lease will allocate the costs and benefits of implementing sustainability measures between the landlord and tenant, and thereby reduce economic disincentives commonly found in traditional leases.

For example, if neither party alone is willing to pay the entire up-front cost for green improvements, a green lease can provide that a tenant will pay a portion of the initial cost of, say, installing solar panels amortized over the lease term with the balance being borne by the landlord. The green benefits are also shared, because the tenant gets reduced energy costs and the landlord gets the added value to the property.

Second, a green lease will include express provisions for achieving specific sustainability objectives, such as installing high-efficiency systems, using recycled or green-certified construction materials, setting up alternative energy sources, or employing innovative roof and parking lot designs to reduce storm water runoff. Lower cost

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options include installing bike parking, showers and lockers, and creating areas specifically designed for recycling and composting.

Green leases can cover the full “spectrum” of green. This means that some green leases will incorporate more sustainability objectives than others.

“Light green” leases will incorporate less drastic measures to achieve more limited objectives, like installing a shower, lockers and/or bicycle parking to encourage employees to adopt more sustainable transportation options for their commute.

“Dark green” leases that provide for more comprehensive changes may enable an owner or business to obtain and maintain certification of LEED or similar standards.

LEED is an internationally recognized green building certification system that provides third-party verification that certain sustainability objectives and standards were met in the design, construction and operation of a building. Light green leases are often a good option for owners and businesses seeking to start greening their facility and business practices.

Five steps to a green lease

Entering into a green lease or adding a green addendum to an existing lease commences before negotiating the terms or signing the lease. The following steps offer insights into the green leasing process for both tenants and property owners.

First, the parties should have clear sustainability goals, which may include achieving social-environmental responsibility objectives, energy savings, cost savings and marketing buzz. Crafting a green mission statement will assist each party in focusing and articulating respective green goals.

Second, each party must understand and evaluate the green options. Researching and assessing possible green options, including the cost/benefit relationship and cost allocation, helps assure that the parties will make informed decisions. The California Sustainability Alliance offers a number of tools for evaluating green options at http://www.sustainca.org/green_leases_toolkit.

Third, each party should communicate its green goals and preferred green improvements to the other party. For new projects, a

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tenant might submit a request for proposals to a number of potential landlords outlining its green goals. After receiving responses, typically as letters of intent, the tenant can compare the options, analyze economic impacts and negotiate for any desired changes.

Fourth, the parties should think creatively and be open to innovative arrangements. Incorporating green provisions into a lease does not have to mean that one party gains at the other party's expense. Although changes to many provisions in a lease typically benefit one party more than the other, such as changes in rent, some green provisions present a real opportunity for a landlord-tenant win-win. This is particularly true for capital improvements that result in ongoing cost savings, tax incentives and/or increased property values.

Fifth, the parties must seek out and use knowledgeable counsel. The general business and green terms must be properly structured in the lease. The parties should be represented by counsel familiar with

sustainability issues from both sides so that mutually beneficial results can be achieved. Because many green issues are relatively new to the market and the associated costs and benefits remain uncertain, professional guidance in drafting and structuring the green lease will help ensure success.

Green initiatives can reduce environmental impact, save money and enhance marketing presence and standing within the community. When considering a new location, or renegotiating an existing lease, consider integrating sustainability goals into the leasing process by insisting upon a green lease.

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