

The Art of Commercial Lease Negotiation

When you ask Barry Saywitz for his expert advice on helping tenants lease or buy commercial real estate, he quickly replies, “Start the process early, hire an expert, get educated and you’ll be better off than if you try and do it yourself.”

Saywitz, president of The Saywitz Company, has more than 30 years of experience representing strictly tenants. Most of his business is spent helping clients find new space or renegotiating favorable leases to stay where they are. He estimates his company historically saves clients between 10%-30% from the landlord’s initial proposal, a saving that can result in hundreds of thousands if not millions of dollars, depending on the transaction.

“You want somebody who’s savvy at what they do and who is going to negotiate on your behalf for you and come up with a solid negotiation strategy.” Saywitz says. “Anyone can call up the landlord and say, ‘I want to pay less versus more.’ That’s not a strategy.”

Saywitz came by this calling in the late 1980s



Barry Saywitz

Traditional commercial real estate companies, large brokerage firms and developers lease and sell their properties to obtain the most amount of money possible from the buyer or tenant. Tenants have the opposite goal: paying as little as possible. Yet when tenants try to negotiate themselves, they are at a serious disadvantage. That’s when it’s time to bring in The Saywitz Company, which strictly represents tenants and buyers, thereby leveling the playing field.

after starting at Howard Ecker & Company, one of the first brokerages in the country to specialize in representing tenants. Commercial real estate then was very different than today.

“At the time, tenants didn’t care about having somebody help them,” Saywitz says. “They were just concerned about how much free rent or goodies the developer was going to give them because this was the 1980s and there were deals

all over the place. Whether they were deals or not, they were perceived deals.”

Then came the 1989 market crash. Suddenly, people wanted and needed help but didn’t know how or what to negotiate with leases. Saywitz saw the value of having somebody looking out for the tenants’ best interests.

It became common sense: You would never hire

your wife's attorney to represent you in a divorce. But you would hire an accountant to do your taxes, so why not hire a professional to help you secure the best deal on office space?

"If you don't know what to ask for, if you don't know how to ask for it, and you don't know what things are available to you, you run the risk of leaving money on the table," Saywitz points out. "You run the risk of being taken advantage of, and then on top of it, you run the risk of spending more time, effort and energy, which costs you money."

Having representation also avoids any conflicts of interest. A tenant might try and negotiate with the landlord or the seller's broker, who inherently doesn't have the tenant's best interests in mind.

"If you try to negotiate on your own for a business decision that will impact your company for years to come, with no expert representation, thinking that you are a good negotiator or don't need the extra help, you are sorely mistaken," Saywitz says.

Saywitz purchased the company's West Coast operations of Ecker & Company in 1994 and changed its name to The Saywitz Company.

His strategy is simple: He negotiates based on what he calls the landlord's "next-best alternative." Say the landlord has a tenant with an expiring lease. The landlord wants to raise the rent to the current market rate. The best alternative would be to raise the rent and keep the tenant. The next-best alternative would be to re-rent the space, but by doing that, the landlord has to spend money on improvements and upgrades. Plus, there's no rent coming in while it is being renovated and while they search for a new tenant.

"The cost to the landlord if a tenant were to relocate is exponentially worse than renewing the existing lease in place," Saywitz adds. "The landlord will be exposed to downtime, tenant improvements, marketing costs, legal fees, brokerage fees and the uncertainty of who the next tenant will be."

Knowing this, Saywitz would negotiate a below market rent for his clients. That way, the landlord still gets a rent increase, the tenant continues to pay below market for the duration of the new lease "and then it's a win-win situation," he says.

Another aspect of Saywitz's strategy is finding leverage. The best way to do that, he says, is to begin renegotiating the lease early which can be

1-2 years before the lease expires. That's especially important in today's landlord market.

"For a tenant to say, 'I'm just going to wait until there's three to six months left on my lease and then I'll look at it,' you've done yourself a disservice in any scenario," Saywitz points out. "To successfully renegotiate the lease where you're at, you also need to understand what your options are in the market and what is going on around you, and then you can apply that to your situation."

Example: An older San Clemente, Calif. office building had to be brought up to code, which is vastly more expensive. But since the new code requirements only take effect if permits are sought to upgrade and improve – and since that only happens if a new tenant moves in – Saywitz knows it is in the landlord's best interest to keep the current tenant who is happy with the current space.

Starting the renegotiating process early gives an individual more time to find such leverage. "If you're fearful that your tenant is going to move, and you are going to incur these costs for anyone but the existing tenant, it would be worth it to make a little better deal for the tenant who's already there because then you don't have the same expenses," Saywitz says. "The average tenant wouldn't know that, and the average tenant wouldn't know how, or to what extent, to use that as leverage with the landlord."

The best kind of leverage is when a tenant has more than one interested landlord. Saywitz had a client checking spaces in Irvine, Calif. After three landlords promised upgrades, Saywitz went to each landlord and asked for free rent, telling each that by doing so, they'd become first choice. By the time he was done, Saywitz had negotiated six months of free rent when none of the landlords initially were willing to give any.

Leverage works both ways and in a tight market with little vacancy landlords may be less likely to offer concessions which is all the more reason to have a seasoned negotiator by your side and a sound negotiating strategy.

"If the market is up or down, if the market is a landlord's market or tenant's market, the concept is the same," Saywitz says. "Be smart, use the expert and reap the benefits of your decision-making." — By Lee Barnathan, California Business Journal

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