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COVER STORY

Avoiding the common pitfalls of moving your business

Brian Bandell, Senior Reporter

Florida Window and Door President Scott Berman was thrilled to start building out his new headquarters in Lake Worth – until his general contractor opened the walls and encountered a few surprises.

The walls required various fixes to get it up to code, and, having just purchased the property, Berman's company had to correct the deficiencies at its own expense, he said. That's on top of the re-roofing, exterior resurfacing and the addition of a second floor he had already planned. When all was said and done, Berman's initial construction estimate of \$1.5 million had increased to \$1.8 million.

"It was a little more than I thought we were getting into," he said. "My contractor said: 'The next building you buy, you should have me look at it first.' The deal took place so quickly, I didn't have time."

Berman is still happy with the 18,000-square-foot location, but perhaps he could have negotiated a better deal if he'd known about the building's problems.

The takeaway: Securing new office space is a tricky business littered with land mines. It's a process most companies go through regularly as their leases expire or they outgrow their space. But it's one that executives aren't always prepared for, which could lead to disastrous results. The *Business Journal* spoke with experts in the leasing field and the heads of recently relocated businesses to lay out a road map for companies in the market for new space.

What to know before you start

One of the most important points companies should keep in mind is to start considering options for their spaces early, said Alan Kleber, a managing director and tenant representation specialist with JLL. Most leases have a date by which the tenant must notify the landlord of its option to renew – usually nine to 18 months before the lease expires. Savvy tenants start exploring options a year before this renewal notification is due, he said.

Knowing its lease in Plantation would be up in March 2016, Uniform Advantage started the process of finding new space in April 2014, said COO John Jarenda, who worked with JLL. It announced a new downtown Fort Lauderdale location in fall 2015, but didn't move until April 2016, as the interior buildout took 20 weeks.

Even tenants leaning toward renewing their lease should hire a professional adviser to help them compare other space and negotiate a more favorable deal with the landlord based on the market rates, Kleber said.

“Unless a tenant goes through the full advisory process, they are getting an inferior deal to the tenant moving into vacant space next door,” he said.

- **Assemble your team**

Kleber said early in the process, a tenant should select four professionals: a broker/adviser, a real estate attorney, a construction project manager and an architect. The team can advise the tenant about how its floor plan should look, whether it would fit into particular buildings, and the costs involved. Kleber warned not to rely on project managers or architects selected by the landlord to avoid possible conflicts of interest.

- **Will the business expand?**

If expansion might be in the cards, the business’s office space for the next five years or so should have the flexibility to grow. This could include options or rights to take over neighboring space, Kleber said. For major tenants, a landlord could grant superior rights to lease neighboring vacant space, including the right to match an offer from third parties.

Jarenda said knowing what space might become available in the building because of other tenants’ expiring leases is important to provide options for future growth.

- **How important is cost?**

Few companies make a location decision based solely on the lowest possible rent. Bob Orban, senior VP and manager of the Miami branch of tenant representation firm Savills Studley, said companies should weigh the desire for value against having a prominent location.

If cost is the main driver, look in office markets with high vacancy rates because landlords will be forced to negotiate competitive deals, he said. Otherwise, look for a building that’s about to lose a major tenant.

Orban recommends that companies narrow their search to two sites - even when leaning toward one of them - and then let the landlords compete against each other.

- **Labor should lead**

Access to labor should drive the location decision, Kleber said. Businesses should know where their workforce lives and where their employees of the future are likely to reside. Are there some valued employees the company would pay to relocate near the new office? If so, what would that cost?

Law firm Kelley Kronenberg has a different location strategy for each county. In Broward County, it’s in Plantation, and Principal Partner Heath Eskalyo said it’s looking for space close to Interstate 595 or Interstate 75 to build a larger headquarters. He’s aiming to purchase and build an office because that would be less expensive than renting for almost \$1 million a year, as it does now. Most of its attorneys there have families and live out west. They often do defense work representing businesses and insurance companies, so the bulk of their time is spent in

negotiations, not courthouse litigation, and they don't need to be downtown, he said. They would rather not deal with the traffic.

In Miami, Kelley Kronenberg recently opened an office at 1111 Brickell Ave. Eskalyo said that office has mostly young attorneys who live downtown and specialize in litigation.

Florida Window and Door's Berman employs a blue-collar workforce, so relocating to Lake Worth from Palm Beach Gardens will place the company closer to more affordable homes. Most of his workers commute from the south, not from the more expensive northern part of the county.

• **Traffic vs. amenities**

The big struggle for most companies is weighing traffic patterns against being in an area with enjoyable amenities, such as restaurants and social settings. The areas most attractive for hanging out tend to be nightmares for commuters and have high housing costs.

Luis Salazar, founder and managing partner of Salazar Jackson, said he moved the nine-person law firm from downtown Miami to Coral Gables' Ponce de Leon Boulevard to reduce commute times. His employees, who mostly live south, cut their drive time an average of 20 minutes each way, he said.

Plus, Coral Gables has plenty of great restaurants and social/networking options, so he doesn't feel like he's missing out on being downtown, Salazar said. Another plus: Because traffic there isn't as bad as it is downtown, clients are more likely to visit his office, he added.

"By moving into a more pedestrian- and driver-friendly city, we greatly improved the quality of life for the people who work here," Salazar said.

Pike Rowley, managing director of Florida for commercial brokerage Avison Young, said many young employees, especially in technology, prefer urban living because they want to live and work where the energy is. They don't mind the traffic because they'll use Uber, public transit or walk, he said.

Companies should also consider how often they host clients in their offices or meet them for lunch nearby, Rowley said.

"When we had our office on Las Olas, we would step outside and have a dozen choices of restaurants in a short walk, and we would meet people we know," Rowley said. "Now, in Cypress Creek, we have to go downstairs to a deli or go in a car, and have fewer choices and see fewer people. It's less social and less entertaining."

• **Priority on parking**

Unless most of your workforce plans to walk or use public transit, parking spaces will be a priority. Orban said landlords will typically over-reserve a parking garage, for example, promising tenants 500 spaces when the garage actually has 450. That's because they assume that not all employees will be in the office at once. Make sure the landlord hasn't over-reserved the garage too dramatically to avoid parking challenges.

What's more, Orban said, a new tenant should request an initial period of free parking, which many new tenants neglect to ask for. The more competitive the office market, the more likely tenants are to get bonuses, such as the free parking passes, he added.

• The right technology

Older buildings may not have updated telecommunications capabilities. **Richard Schermer, a commercial real estate attorney with Pathman Lewis**, said tenants should ensure the space has the appropriate technology, including effective Wi-Fi and cellphone reception. If the tenant needs to add features, such as a satellite dish or antenna, make sure zoning allows it.

Tenants should also inquire whether the building has a backup electrical power source, or if they could add one, Schermer said.

Many law firms prefer to lease in buildings served by two electrical substations, so there's a backup in case one goes out, Kleber said.

Improvement troubleshooting

The biggest issue for tenant improvements is going over budget. If the tenant burns through the improvement allowance the landlord agreed to in the lease, it's often a tenant's turn to pay.

JLL's Jarenda said Uniform Advantage expected to exhaust its improvement allowance and pay out of pocket for its 52,683-square-foot space because it wanted premier finishes. It still came within 10 percent of its construction budget.

"Our goal from the beginning was to create a signature workspace to attract new talent and retain existing talent," Jarenda said.

• When dollars aren't equal

Consult with your project manager and architect to determine how much your improvements would cost in each location, then you should know whether each landlord's offer is sufficient, Kleber said.

"One of the biggest surprises in commercial real estate deals are tenants and brokers who are chasing to get a deal done and the landlord says: 'I will give you \$30 per square foot' [for tenant improvements]," Kleber said. "But no one investigated what it would cost to build out the space in the first place. All of a sudden, the CFO gets the design plan and it will cost \$75 per square foot. Now you are out of pocket."

Tenant improvement dollars are only good if they're in the bank. Kleber recommends making sure the landlord is in good financial standing with its creditors and, if possible, posts the promised tenant improvements into an account to demonstrate it has the funds. If the property gets hit with foreclosure, promises of tenant improvements may not be kept, he said.

A successful move

Now that you know what to do before occupying a new space, keep in mind that there's no such thing as a trouble-free move-in. But, like most scenarios in business, planning will be key to making the process infinitely smoother. Line up the right team, identify your must-haves and the options you can do without, and know that the landlord will likely draft an initial document that's largely in its favor. It's up to you to ask the right questions to iron out the most advantageous deal. And remember: Everything in a lease is negotiable.

What to ask when hammering out a deal

What condition will my space be in?

The landlord could turn over an empty shell ready for drywall and flooring, or a space with the previous tenant's configuration. That latter scenario could require costly demolition.

The lease should define the condition of the space upon delivery to the tenant. Ask for the landlord to deliver it in ready-to-build condition at its expense. Require that the space have handicap-accessible restrooms and fire safety equipment that's up to code. Ensure you aren't paying to fix the landlord's lack of compliance with building codes and regulations.

How much of this space is usable?

There's a difference between usable space and the rentable space outlined in a lease that is not available for business use, such as restrooms, electrical and janitorial rooms, and the elevator lobby. For example, two leases might both be for 20,000 square feet, but one could have 18,000 usable square feet, while the other has 17,000 usable square feet because the latter includes more space that can't be utilized for business. Always compare the rent per usable square foot.

Does anyone have superior rights on this space?

Landlords usually won't volunteer that a tenant holds superior rights to a space, so prospective tenants should always ask. You don't want to be the executive that announces to employees that the company has signed a letter of intent to lease space, only to find out you lost out because a tenant in the building held a right of first refusal to match your deal.

Can I get an SNDA?

A subordination and non-disturbance agreement (SNDA) is a deal between a tenant and the landlord's lender not to disturb the operations of the tenant as long as it remains current on rent. This is important because the lender could go after the tenant or its tenant improvement reserves in a foreclosure against the landlord. A tenant also can request in an SNDA that the lender fund tenant improvements or take the difference out of the rent, should the landlord become insolvent.

Will you promise I have the lowest rate in this building?

Major tenants have received a "most favored nation" clause in their leases that promises them the lowest rate per square foot in the building. That protects them should rates fall, and prevents the landlord from offering other tenants better deals.

What hours can I operate my business?

Landlords generally want to turn off the air conditioning after work hours, but some companies need more time. Large tenants can negotiate to keep the building's operating system on for extended hours, even on weekends. It's also key to negotiate the rate for extended hours of air conditioning, as some landlords charge double the normal rate.

What protections are there for my parking spaces?

Some landlords have sold their parking garages to developers that demolished them to make way for new projects. There's often a temporary parking solution until a new garage can be

completed, but the construction doesn't always finish on schedule and the interim parking arrangements may not be convenient for employees.

Add a provision to the lease that gives you the right to terminate it if sufficient parking is taken away. Or, if that's not agreeable, define what the interim parking situation would be. For example, there could be valet service or alternative parking within a reasonable distance from the building.

Are you planning common area renovations?

Sometimes, after a tenant moves in, it's a surprise when the landlord rips up the lobby, bathrooms and hallways for extensive renovations. Large tenants have more leverage when it comes to these changes, especially if they occupy full floors. In some cases, they can stipulate that landlords renovate common areas. Also, a savvy broker will know whether big construction projects are planned on neighboring sites, so you should ask if that will impact access to the desired building.

Can I get a breakdown of the landlord's operating expenses?

In a triple-net lease, the landlord will pass on taxes, insurance and operating expenses to the tenant. The latter part could be a problem, as some landlords could overcharge for operating expenses. One common practice is having a team of property managers who work at multiple buildings, whose salaries are paid in full by each of the buildings' tenants. Those salaries should be divided proportionally among the multiple buildings they serve. Leases should provide tenants the right to examine the landlord's books and audit their expenses. Tenants should also request a cap on the annual increase in controlled landlord expenses.

What's your insurance policy like?

The insurance piece of pass-through expenses can vary widely among buildings. Some landlords have lower rates because the property is insured as part of a national portfolio, while one-off building owners tend to have higher insurance rates.

One of the most important parts of the insurance policy for tenants to know is the deductible. Often, a tenant is responsible for its pro-rata share of the deductible based on how much space it occupies. The lease will often stipulate how long the tenant has to pay its share of the deductible, and failure to pay is often considered a default of the lease. Tenants should understand how large their potential deductible liability could be, and make sure they have a reasonable amount of time to pay it.

How long will you take to repair damage?

The lease should specify how long the landlord has to repair the property and make it usable for the tenant, should it be damaged. If a repair isn't done within a reasonable amount of time, or if the lease is near its expiration date, the tenant should be able to terminate the lease.

Can you promise you won't invite disruptive tenants?

Most traditional office tenants don't want a large government or medical office in their building because they clash with the workplace environment. Major tenants can request a stipulation that certain types of businesses shouldn't be allowed in the building – or at least not adjacent to their space.

Can I sublease my space?

The lease should allow a tenant to sublease space to a third party, and stipulate that the landlord shouldn't unreasonably withhold consent to such a deal.

If it's an office condo: How strong are the association's reserves?

In an office condo, the landlord is responsible for your unit, while the condo association and its management company maintain the common areas. It's important to ensure the association has proper reserves, and that most of the tenants are paying on time. Make sure it doesn't have large past-due bills that could result in special assessments.

Will you promise not to terminate or relocate me?

Tenants should not grant the landlord an early termination right or the ability to relocate the tenant to another space. If the landlord insists on a relocation clause, the tenant should demand that it require the most convenient space possible and as much financial compensation for the relocation as possible.

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