Letters of Intent: Defining Terms for Efficient Lease Negotiations

Description: Learn what to include and exclude in a letter of intent to avoid pitfalls down the road.

Before committing to any real estate transaction, the “deal terms” need to be put in writing so that the parties can engage their respective team members to understand and model the design, construction, financial and operational assumptions and key business terms associated with the transaction. The initial document where these concepts are identified is the “letter of intent”. While for the most part non-binding, the letter of intent serves as the moral compass for the deal.

How to get to the letter of intent stage in a transaction, what to put in the letter of intent and how to avoid being caught in a “binding” contract as a result of what is stated in a letter of intent are important concepts to understand in any lease transaction. A well drafted letter of intent informs the lawyers in drafting the underlying lease and minimizes disputes and late arising “deal breaker” issues that may add significant expense to or derail a transaction.

This topic will provide legal advice on how principals and representatives for landlords and tenants should structure a letter of intent and how to use the document to promote efficient lease negotiations in office and retail lease transactions. The presenters will also discuss issues unique to brokers in the letter of intent stage of real estate transactions.

Learning Objectives:

- You will be able to identify any broker disclosure and agency issues.
- You will be able to recognize the structure of a letter of intent.
- You will be able to discuss legal frameworks and issues.
- You will be able to review why you would use a letter of intent.

Contents:

Why Use a Letter of Intent
- Allows Parties to Confirm Terms, Even If the Agreement Is Not Binding
- Sets Moral Compass of the Transaction
- Provides for Certain Binding Terms
- Triggers Internal Reporting and Modeling and Engagement of Outside Counsel
- Conformity and Predictability in Repeat Transactions

Before Getting to the Letter of Intent
- Request for Proposals
- Test Fits
- Market Due Diligence
- Multiple Offers

Legal Framework and Issues
- Published Cases Relating to Exchanging a Letter of Intent
- Implied Duty of Good Faith
- Risks of Providing Estimates of Operating Expenses and Other Benchmarks

Structure of a Letter of Intent
- Key Business Terms
- Using the Qualifier “to Be Further Negotiated in the Lease Documentation”
- Sample Letter of Intent “Non-Binding” Language
- Avoidance of Marketing Language
- Termination of Negotiations
- Parallel Tracking Design and Construction and Binding Side Agreements

Broker Disclosure and Agency Issues
- Broker Disclosure Obligations to Clients
- Statutory Disclosures Relating to Agency and Dual Agency
- Letter of Intent Not a Substitute for Engagement Agreement
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