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THE TENANT'S BROKER & CONSULTANT

"SO, SUE ME": PROTECTING THE TENANT'S INTERESTS

Part 2

By: Ronald R. Pollina, Ph.D.

INTRODUCTION

One of the biggest problems tenants face is receiving inadequate service - or no service at all - from their landlords. As discussed in Part 1 of this two-part series, under the Standard Lease prepared by a landlord, often the tenant's only recourse in the event of a landlord default is a lawsuit. The landlord's Standard Lease is designed to provide the landlord other recourse against the tenant, including eviction or penalties such as additional rent or interest charges. Since most tenants wish to avoid long, costly court proceedings that can often outlive the remaining term of the lease, their only alternative is to endure the problems. Part 2 of this two-part series examines lease terms that the tenant can add to the Standard Lease to provide alternatives to court proceedings. This article will examine motivating landlords through the use of rental abatement and self-help provisions.

THE GREAT MOTIVATOR

Certainly, one of the most significant motivators is to withhold rent or set off rent for use in correcting problems for which the landlord is responsible. As related in Part 1, simply withholding rent to motivate a landlord can place the tenant on dangerous footing unless the lease specifically provides the tenant this option. The simplest and best method for motivating difficult landlords to provide services is to have the right to abate rent written into the lease. This is a troublesome issue for landlords to deal with, and indeed they may have difficulty convincing their lenders to approve such provisions. Certainly, a lender's biggest concern is that the landlord will have the rental income to make mortgage payments. There are ways, however, to soften the blow for the lender, thereby improving the chance of receiving the lender's approval of an abatement of rent provision.

In making rental payments, the tenant is paying not only for the right to use its space but also for the ser-



Dr. Ronald R. Pollina

President, Pollina Corporate Real Estate, Inc.

Dr. Ronald R. Pollina is a nationally recognized corporate real estate broker, consultant and negotiator. In addition to representing corporations throughout the United States for over 20 years, he has served on the faculties of two Universities and written over 50 articles and books. As a frequently quoted real estate economist, Dr. Pollina's opinions have appeared in the *Wall Street Journal*, *Business Week*, *Financial Times of London* and other business publications.