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ENVIRONMENTAL LEASE PROVISIONS: BASICS FOR NEGOTIATION

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Beginning in the late 1960's, concerns regarding the environment began to unfold. Soon, legislation, such as the Clean Air Act and the Clean Water Act, was enacted to respond to the growing concern for the environment. At first, this movement was considered conservation. But over time, the focus encompassed more than conserving the natural resources, and it evolved into what is now known as environmentalism.

A Growing Concern

Environmentalism has grown over the past twenty years into a viable force that affects the business world in almost every respect. Many laws have been enacted that are designed to protect the environment and the business community. Presently, there are at least twenty federal statutes and six federal agencies involved in regulating the use, containment and release of hazardous substances. The burden is placed upon the business community to be aware of and react positively to this growing body of law.

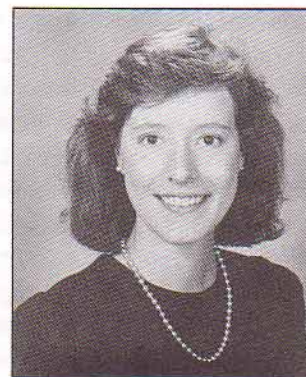
Yet, with all of the attention given to environmental concerns, the commercial office lease has received little attention by most Tenants. Leases that address only asbestos and containment of hazardous materials are no longer adequate. Many experts agree that poor indoor air quality is likely to become the biggest environmental problem facing corporations over the next decade. (See Sick Building Syndrome, *Pollina Corporate Report*, 3rd Quarter, 1992, Vol.3, No. 4.) Therefore, this issue needs to be addressed in today's commercial lease. Clauses absolving the Landlord from liability for such items as clean up costs and reconstruction also are no longer acceptable in the commercial office lease. Insurance companies have been the leaders in the development of environmental language, at first as lenders and today as Landlords. They also are the pacesetters in the development of Tenant-oriented environmental lease language. As Tenants, these insurance companies are the most critical of the Landlord environmental lease provisions.

The environmental clauses in the lease should apply not only to traditional hazardous chemicals and waste, such as petroleum-based products, but the clauses should reach further, addressing such issues as indoor air quality and other pollutants. The clauses need to deal with other

issues such as liability, compliance and options to cancel the lease.

The traditional environment-related clause found in the average lease superficially addresses environmental issues. Consider, for example, a situation in which the Tenant agreed to a clause that states that the Landlord is not aware of any asbestos-related problems in the facility and should the demised premises later be found to contain asbestos, the Tenant will fully cooperate with the Landlord. At first glance, the clause appears to be rather fair and equitable, until a problem surfaces.

The full cooperation indicated in the clause may force the Tenant to relocate temporarily, at the Tenant's



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