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RESOLVING DISPUTES WITH LANDLORDS – WHO DECIDES WHAT IS FAIR?

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Most leases provide one vehicle for tenants to resolve disputes with landlords, and that is to proceed to court. As office markets tighten and landlords are less inclined to do “whatever it takes” to keep tenants happy, the need for resolving tenant/landlord disputes will increase. When discussions break down, the simplest, quickest, and least expensive method for resolving disputes is arbitration. While the tenant may request that all lease related disputes be settled through arbitration, it is highly unlikely that the landlord would agree. From the landlord’s perspective, arbitration often means a loss of negotiating leverage. This is especially true in periods of tight market conditions. For example, if the lease calls for the tenant and landlord to agree upon a market rental rate for a lease renewal, the landlord recognizes that delaying an agreement will more than likely result in a higher rate, since the tenant’s relocation options diminish as the lease termination date approaches, especially in the situation of a tight market; in addition, the tenant faces holdover penalties.

There are many forms of arbitration. This article will address some of the key elements of arbitration and then provide a detailed discussion of baseball arbitration, which the authors have found to be the best form of arbitration for resolving lease disputes that involve determining “Market Rate” for renewal and expansion options.

ASSURING QUALITY ARBITRATION

Certainly one of the most important factors in negotiating an arbitration provision for a lease is to

agree upon the criteria for arbitrator selection. It is absolutely essential that the arbitrators be experts in the field that they are to arbitrate. If the dispute is related



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Portions of this article written by Michael Meyer appeared in “The Los Angeles County Bar Association Real Property Section Newsletter.”



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