

Ohio Practical Business Law

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Negotiation Tips for Prospective Commercial Tenants in 2009

The [Ohio Real Estate Blog](#) recently offered negotiating tips for commercial tenants entitled "[40 Ways to Reduce Occupancy Cost/Risk in 2009](#)" (with a hat tip to **Greg Schenk** of the [The Schenk Company, Inc.](#)). While some of the suggestions (such as limiting guarantees in some respect) seem to fall in the category of "great, if you could get it", most are more realistic. In general, the tips fall in the following areas:

- **Exit Strategies.** Negotiate "kick-out" clauses which allow early termination by the tenant at least under certain triggering events; more lenient assignment provisions, use shorter lease terms and more renewal options/ as many longer options as possible.
- **Negotiation of CAM (Common Area Maintenance) terms.** Base on total rent without offset for vacancies or anchor tenants; eliminate or reduce inclusion of administrative fee; cap management fee (4%-6% is typical); make sure you have right to audit CAM.
- **Default Provisions.** Get notice and cure periods; increase grace period for late rent payments and other cure periods; decrease late fees; limit number of events of default

Some others that I particularly liked:

- Eliminate ability of landlord to relocate tenant or make relocation at landlord's expense.
- No percentage rent or at least establish a break-point before percentage rent commences
- Make sure property's rules and regulations cover potential problems other tenants might create
- Obtain right of first refusal with respect to adjacent space or to buy property

[For commercial tenants looking at lease renewal in 2009](#), Greg Schenk breaks the news that landlords are likely to offer better deals to new tenants than those already in place and offers the following tips:

- Start the renegotiation process early, as much as a year for long term leases.
- Seek out other suitable locations and obtain real viable bids from other prospective landlords.
- Never accept your current landlord's first offer.
- Never reveal your interest in renewing your lease to the landlord or any of its agents, including property managers, maintenance or janitorial personnel.
- Always refer your landlord to your attorney or other professional representative.