

## LOOK BEFORE YOU LEASE

BY STEPHEN L. BURLINGAME

*U*nless you are operating your business out of your home, you need space. Many businesses lease that space. The landlord hands you a form, you check the names and rental amount, and then you sign, right? Wrong. Let's look at some things you should consider before signing.

Landlord. Who is the landlord? What is the landlord's reputation? Have you checked with current tenants? No matter how good the lease document is, if the landlord isn't reliable, chances are you won't be happy. Also, remember that if the landlord is a limited liability entity, you may have no deep pockets to sue if something goes wrong.

Space. Do you know exactly what space you are renting? An attached diagram outlining that space is often very helpful. Do you know the difference between "useable" space and "rentable" space? Useable space is the area between your four walls, but most landlords use rentable space which includes a portion of the common areas. Using rentable space often increases your rent by as much as fifteen percent.

As long as we are talking about your space, do you get to keep it for the entire duration of your lease term? Many leases include the landlord's ability to move you to another portion of the building if the landlord needs your space for another tenant. If you can't live with that, you should delete that clause or find another landlord. But, if the clause stays in, make sure that the landlord pays the cost of your move, including the printing costs for your new forms and letterhead.

Other Tenants. Who are your potential new neighbors? Is their business compatible with yours? Remember that new neighbors may move in after your lease term starts. Negotiate a clause which prevents the landlord from renting to incompatible neighbors during your lease term.

Lease Term. Now, let's talk about your lease term. Most commercial lease terms run from three to five years. How does that fit into your business plan? Do you need to negotiate an early termination clause if things don't work out? You should also consider options to renew if you choose to stay beyond your initial lease term. You will also need to establish a formula for determining the rental amount during the option terms.

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Who Pays For What? Is the rent your only responsibility? Your landlord may propose a triple-net lease, which means you are responsible for all utilities, operating expenses and property taxes in addition to your rent. Can your business afford these added expenses?

Repairs. Is your landlord responsible for all repairs? Most leases include some tenant responsibility for repairs. If your lease does so, make certain you limit your repair obligations by dollar amount or to non-structural items or both. Landlords generally should be responsible for all structural repairs. After all, your lease term is only for three to five years, but a roof should last for at least 20 years. Most leases will require you to pay to fix damage done by you or your employees.

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## LOOK BEFORE YOU LEASE *CONTINUED...*

**Condition of Premises.** Most leases include a clause that says that by moving in, you are agreeing that the condition of your space is acceptable. That acceptance sets the benchmark for the condition during the term of the lease. If there are problems, even minor ones, amend the lease to provide for the landlord to perform the post move-in repairs. Also, what happens when you are ready to move in but the space isn't ready? If timing is important to you, make sure that the landlord compensates you for a delayed move-in.

**Security Deposit.** The amount and use of security deposits are limited in residential situations by Michigan law. There are no such protections for commercial leases unless you include them in your lease. Is the financial

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condition of your business strong enough to convince your landlord to waive a security deposit? Weak leasing market conditions may also provide you with leverage to obtain a waiver. If the amount of the security deposit is significant, request that the landlord escrow it in an interest bearing account.

**Dispute Resolution.** Disputes regarding the lease are resolved by the courts unless the lease provides arbitration as the sole method of resolution. Arbitration is usually considered to be quicker, cheaper, and less adversarial. However, by virtue of its mechanics, there is often no clear cut winner, rather, a splitting-of-the-baby-in-half outcome. You may wish to consider adding an arbitration clause to the lease. If no arbitration is selected, the form lease will probably ask you to waive your right to a jury trial. Because juries are often thought to be more sympathetic to tenants and because demanding a jury trial generally slows down eviction proceedings, you should try to delete the waiver from the lease.

**Assignability.** Landlords typically include a non-assignment clause without landlord consent in their lease

forms. If you accept this, your landlord can arbitrarily refuse to allow your assignee to step into your lease. You should at least include language requiring the landlord to use reasonable discretion in considering the suitability of your assignee.

**Conclusion.** There is a lot that you can do to make your lease more tenant friendly. Hopefully, this article gives you a head start in doing so. And, I would be remiss if I didn't suggest that you also consult your experienced real estate attorney for assistance.



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## GOLDEN NUGGET

**Myth:** Putting property in a revocable Living Trust restricts what I can do with the property during my lifetime.

**Fact:** No. A revocable Living Trust is created while you are alive and can be revoked or amended. Any asset placed in the name of the trust is subject to the control of the Grantor/Trustee (you). Therefore, during your lifetime (while you are competent) you can essentially do what you choose with the asset. The trust is not a separate taxpayer and all income is reported under your own social security number.

Interested in more information about Estate Planning and Probate issues? Sign up for Ryan Wilson's free monthly *Golden Bullets*. It is available in print and email format. For a subscription call Mr. Wilson at 517/377-0897 or email him at [rwilson@fraserlawfirm.com](mailto:rwilson@fraserlawfirm.com).

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## PROVIDE US WITH YOUR FEEDBACK

Fraser Trebilcock Davis & Dunlap, P.C. is interested in our clients opinions about the services they receive. In the up coming weeks, an invitation to participate in a confidential survey administered by SureVista Solutions will be emailed to a random group of firm clients.

If you receive this invitation, we would appreciate your participation. Again, this is a confidential survey, administered by a third party. Your feedback is important to the firm and will help frame our future.

## NEW EEO-1 REPORT REQUIREMENTS

By: MICHAEL E. CAVANAUGH

Private industry employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees, are required to file an EEO-1 report on September 30 of each year. This report provides a breakdown of the work force by race and ethnicity.

There are new requirements for the 2007 report due on September 30, 2007. The biggest change is that the race and ethnicity of each employee is now determined by employee self-reporting, rather than employer visual observation. It will be necessary for all employers who are required to file the EEO-1 report to survey their employees so that they can do the self-identification.

If your company is required to file the EEO-1 Report form and if you would like assistance in complying with the new EEOC requirements, please contact us.



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## FOOTBALL LEGEND VISITS WITH LEGISLATORS

Fraser Consulting, LLC was recently contacted by National Football League Hall of Famer, Jim Brown, in hopes that we could assist him in bringing Amer-I-Can to Michigan. He is touring the country promoting the Amer-I-Can program, a foundation he created in 1988. Fraser Consulting, LLC arranged a meeting between Mr. Brown and lawmakers on March 13, 2007 to discuss opportunities to halt community violence.

Amer-I-Can has trained more than 25,000 adult and juvenile inmates in over 30 correctional institutions in California; now Mr. Brown has his eyes on Michigan. He presented a plan to penetrate 12 Detroit and four Grand Rapids schools beginning in July. The program teaches basic coping skills and offers ongoing resources to sustain positive community contributions.

“I’m reaching out to Michigan, asking you to join forces with the Amer-I-Can Foundation,” explained Brown. “Our weapons of choice in this war will be love and caring, education, economic consideration, family rebuilding, and consistency. I believe that these elements have been the underlying foundation of our continued success.” For more information go to [www.amer-i-can.org](http://www.amer-i-can.org).

## ATTORNEY ACTIVITIES OF NOTE

■ Ryan M. Wilson spoke at the Knights of Columbus, St. Mary’s Parish, in Charlotte, Michigan, on February 20th, regarding the topics of estate planning, powers of attorney and probate administration.

■ The associates of Fraser Trebilcock Davis & Dunlap, P.C. are proud to sponsor and host the April 24, 2007 meeting of the Grand River Connection (GRC). The GRC seeks to develop a stronger network to support Lansing and East Lansing’s young and vital workforce, [www.grandriverconnection.com](http://www.grandriverconnection.com). The April meeting entitled “Moving Lansing Forward,” will provide an opportunity for GRC members to network with established community leaders. For more information contact Vince Pecora, [vpecora@fraserlawfirm.com](mailto:vpecora@fraserlawfirm.com) or Alan Wallace, [awallace@fraserlawfirm.com](mailto:awallace@fraserlawfirm.com).

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