

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

COMMITTEE ON REAL PROPERTY LAW

COMMENTARY ON FORM OF COMMERCIAL LEASE RENEWAL OPTION CLAUSE  
(2011)

Specific Provisions

1. Article \_\_.01 (a). This provision provides the tenant with the right to renew its lease under certain conditions: the tenant is the Named Tenant (not an assignee or subtenant); the renewal is for a period of 5 years (this is a standard renewal time period, but can be more or less); tenant is not in monetary default at the time of exercise or the end of the initial term and tenant occupies a stipulated minimum amount of space in order to renew (there is no point in allowing a tenant to renew if it hardly occupies the space anymore and landlords take a dim view of a tenant who has sublet its space for profit and desires to renew for that purpose).
2. Article \_\_.01 (b). This provision establishes the method by which the tenant can renew its lease.
3. Article \_\_.01 (c). This provision sets forth the terms upon which the lease will be renewed.
4. Article \_\_.02 (a). This provision defines how the renewal rent will be determined in absence of a negotiated agreement between the parties.
  - (i) This section allows the tenant to request that the landlord provide an estimate of what it believes is the "Renewal Fair Market Rental Value" for the premises. The time periods allow the tenant to request landlord's determination so that it is received before tenant is obligated to send the landlord its renewal notice. Notwithstanding that tenant requests that landlord provide an estimate of renewal rent, tenant should be consulting with its real estate adviser to obtain market information about rental values.
  - (ii) This section states that if the tenant does not accept the landlord's determination of the Renewal Fair Market Rental Value, then the landlord and tenant are to negotiate a renewal rent. If that fails, then each party is required to retain a real estate broker to negotiate the renewal rent. If a party fails to select a real estate broker, the complying party may send the failing party a notice that warns the non-complying party that a failure to select a broker within 5 days of the notice will result in the renewal rent to be the rent as determined by the complying party.
  - (iii) In the event that landlord's broker and tenant's broker are unable to agree on a renewal rent, this section provides for the method of arbitrating the renewal rent dispute. In particular, the section sets conditions for the selection of the third, impartial, broker. As the third broker will be the individual who actually decides the renewal rent, it is important that this person be impartial.

(iv) This section describes the arbitration process. Each party is allocated an amount of time to present their positions. The time to present is suggested as 2 hours for each party, which can be modified as needed. After hearing the parties and reviewing the information submitted, the third impartial broker is required to select either the renewal rent proposed by the tenant or the landlord. The third impartial arbitrator is not permitted to select anything else as the renewal rent. The reason for this is that each party is then compelled to act reasonably in its determination of the renewal rental rate.

5. Article \_\_ .02 (b). This provision provides that if for some reason the renewal rent is not determined prior to the commencement of the renewal term, the rent shall be the amount determined by landlord. Any difference between the amount paid and the actual renewal rent shall be reconciled at the time of the determination of the renewal rent.

6. Article \_\_ .02 (c). This provision requires the execution of a document memorializing the renewal rent.

7. Article \_\_ .02 (d). This provision defines Renewal Fair Market Rent. The definition can be expanded or contracted, as the drafter believes appropriate.

8. Article \_\_ .03. This provision allows the landlord to accept tenant's exercise of its renewal option even though the tenant may be in default, but landlord still retains all its rights against tenant concerning such default.