



# Read the lease — for your office and that copier

*You don't have much choice but to rent an office; leasing equipment is a different story*

BY DAVID COOK

Many lawyers subscribe to the rubric that expenses do not count if absorbed by the client. Take copiers. Who cares if the cost per copy is 25 cents if the client is going to pay \$1 per copy? Bill the client. Aside from the obvious dilemma that in a contingency-fee practice you can't always bill the client (what if you lose?), it's always a wise business decision to minimize your costs if doing so doesn't make you any less effective.

## Leased equipment

Lease your copier or computer system? Not if you have any other option. This is how it works: You need a copier, or more than one. The vendor offers the copier which is probably tied into your computer system, allowing you to produce and copy the document in one exercise. The vendor suggests that you lease the copier for five years, and might toss in maintenance, the right to "upgrade," and an option to purchase at the end of the lease for the fair market value. This does not work for you on several levels:

First, the vendor is selling the copier at the list price or even an inflated price to a leasing company (captive, or a leasing company with an exclusive). The leasing company amortizes the purchase price over five years to facilitate full recapture under the lease term (i.e., recover the total of the payment paid to the vendor) plus an interest anywhere from seven to 20 percent.

Second, you do not know exactly what you are paying for because the price is set between the vendor and leasing company. You are paying for a capital asset absent any knowledge of the true purchase price.

Do you pay above list for a car? Copiers are no different than cars, office furniture, computers, and any other significant asset in which the "sticker price" is a list price and subject to aggressive negotiations that collapse the price. Pay cash, and see a 15 percent to 40 percent discount for the copier. Literally, tender a check for the amount you guess is one percent over the true cost. "Take it or leave it" is your motto. A bank loan — or even a credit card with a competitive interest rate — is a better deal for financing because you are financing the discounted price, and not the list or inflated price. When shopping, look for last year's model. Copiers are like cars and change from nearly year to year. Buying last year's model doesn't mean that a copier is flawed, just one year behind in technology.

Tying maintenance to the lease payments is a dud. Maintenance is very competitive, and for the first year is a real money maker for the vendor because today's digital copiers, for the first 12 to 24 months, are nearly maintenance free. For those of us old enough, we remember the introduction of "solid state." Solid states means no moving parts. An old analog copier has a zillion moving parts and requires intensive maintenance. The more the moving parts, the more that the

copier breaks down and compels service calls. On the other hand, digital copiers have a fraction of the moving parts and suffer fewer breakdowns and fewer maintenance visits.

Stay away from copier deals which charge you "cost per copy." These are sure losers as the charges are between two to three times what you would pay if you owned the copier and competitively bid out maintenance.

Don't be fooled by salespeople who state that the lease is the best deal because you can "upgrade." This is a major trap. First, the "move up," means that the inflated balance of the original lease is going to be cycled into the new lease and constitute a "refinance." The continuing lease payments will include a pay-off for the prior lease, meaning that you are paying interest on interest. No, usury does not apply. (*Southwest Concrete Products v. Gosh Construction Corp.* (1990) 51 Cal.3d 701.) Finally, while copiers get smarter every year, the question is whether you really need the very latest technology.

## What's in that office lease?

In today's modern building, rent has the following components: Monthly lease payments, Common Area Maintenance (CAM), and the annual cost of expenses such as escalators, and incidental charges for extra-ordinary maintenance, use of freight elevators, and parking.

Nearly all leases are based upon price per square foot, ranging for a Class A building from \$30 to \$48 per square foot. All leased space is broken down



into rentable (what you pay) and usable (what can be used.) If you take the whole floor, you might be paying for the bathrooms, janitorial closet space, and even elevator space. Is the square footage number accurate? Buy a laser tape measure to confirm. Paying for 10,000 square feet as rentable, when the true square footage is 9,500, adds up on a five-year lease.

Absent a turnkey space, the landlord will offer you tenant improvements (TI) ranging from \$10,000 up to millions. There is no free lunch in real estate, and the TI's are part of the lease package. The TI's constitute nothing less than a loan to you with a rate of interest near 10 percent. This is not to suggest that your office look shabby on the day you take possession, but rather, you are paying for the TI's in your lease payments.

What about CAM charges? Landlords hide inflated, fictitious and marked up charges in CAM charges, plus phantom management fees. Your percentage might, or might not, be correct, for the total CAM charges become a profit center. When the landlord charges \$50,000 for grounds keeping, did the landlord actually pay \$50,000 for grounds keeping and to whom for what? CAM charges

are notorious for marked up charges, and an additional charge for management.

The annual cost of an expense escalator charges the tenant with the pro-rated increase in operating expenses. This is tricky in determining what is truly an increase in costs, such as maintenance, and upkeep; a capital improvement, such as a new roof; and management charges or property taxes. The lease might spell out these charges, but you are entitled to an itemization. The annual cost of expenses is always tied to a base year. These charges are different than other forms of escalators, such as increase in rent based on prevailing interest rates (not too likely in the current environment), cost of living, and generate gradual increase. Read the lease, carefully, to see if the HVAC operates through the weekend. If the building has sealed windows (all modern buildings), the lack of HVAC over the weekends or holidays, or even after 7:00 p.m. on weekdays, can render the premises uninhabitable. High-end attorneys became high end because they work through the weekend. Read the "rules and regulations," which change from year to year and are always antithetical to the tenant.

Watch for mandatory use of the building's telecommunication, or Internet or online access. Some landlords compel the tenant to use their access to the Internet or telecommunications.

Watch for leases that require union labor to repair or maintain the premise which escalates costs many-fold. Ask about a parking discount, and whether you are charged for moving furniture over the weekend, if the building has change guard service. Ask about security and whether the building has surveillance on all floors. Theft in modern office buildings is rampant particularly on Friday afternoons when the staff is gone, doors are still open and well dressed gentlemen go from door to door asking for an "attorney."



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