

Managing the Lease Escalation Clause:

It is common practice for there to be an escalation clause in commercial and industrial leases. The clause allows the landlord to increase the rate of rent according to a specific timeline or as a result of certain triggers within the lease and may be fixed or variable. Escalations may occur annually on the anniversary of the lease commencement date, on multiple year intervals during the lease term or in connection with lease renewal options. The increase amounts could be by specific dollar amounts or on a percentage basis. There are also instances where rent escalation may be tied to outside metrics such as the consumer price index.

A landlord will often use the escalation clause as a means of anticipating the impact that economic conditions may have upon the value of property or considering expenses a landlord may initially cover in bringing in a new tenant. Additionally, escalations provide the landlord with a means of compensation for future atypical costs that were not anticipated at the time the parties entered into the lease.

While escalation clauses are not unexpected, there is still tenant resentment in having to pay increased rent and landlord frustration in attempting to protect its interest. Initial contention may arise as a result of language that may have not been clear enough for the tenant to understand or was not covered in specific detail during lease negotiation discussions. This could result in a disparity of the expectations of the parties as to the ultimate financial implications of the lease and in determining the viability and likelihood of success in connection with attempting to reach an agreement between the parties.

The best course of action for the landlord and tenant is to discuss escalation clauses in the course of the initial lease negotiations and for the parties to identify their specific financial needs and constraints as soon as possible. Utilizing reasonable projections is a helpful tool in determining if an agreement is workable. While there are always risks, neither party wants to enter into an arrangement that is destined for failure. There are many variations of escalation clauses that can cater to the specific short-term and long-term needs of the parties to assist in the process.

Entering into a commercial or industrial lease is a significant step for a business. While some tenants are able to avoid escalation clauses, they are usually an unavoidable cost of occupying real estate and must be carefully planned for and managed. It is always a good idea to work with an experienced professional in the course of entering into a lease to assure the best path to success.

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Amy specializes in industrial sales and leasing. She also offers market consulting services to business and industry throughout the region. Amy Hawley serves on the Loan Review Committee for the Lehigh Valley Economic Development Committee. She also serves on the Career Advisory Committee for Moravian College. She is a Senior Advisor with SVN | Imperial Realty, has earned the 2021 SVN Certified Specialist designation and has written several trade articles. Reprints are available upon request. Amy Hawley can be reached at amy.hawley@svn.com



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Mr. Tranter is a member of the Bar Association of Lehigh County, and is admitted to practice in both Pennsylvania and New Jersey. He is Board Chair of the Boys & Girls Club of Bethlehem, and serves on several local non-profit boards, including the Friends of the Levitt Pavilion, The Coco Foundation, and the American Heart Association, where he is the Past Chair. Matt Tranter Esq. can be reached at mtranter@kingspry.com