

# Time Doesn't Kill Leasing Deals, Bad Negotiation Does

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Every good deal maker knows getting a handshake agreement is just the start of the sale. In deal-making, as well as negotiations, the devil is in the details. And when it comes to leasing commercial space, there are plenty of details for the devil to hide in. The seemingly endless back and forth, sorting through different versions of the contract, can turn even the most earnest parties against each other and has been the demise of many-a-leasing deals. A better understanding of the lease negotiation process can help shed some light on where improvements can be made.

A deal is only an agreement in theory until the lawyers have their say, the contract is detailed and every party signs on the dotted lines. Often that means weeks, sometimes months of passing drafts of contracts back and forth between parties. Deal-making quickly becomes mired in track changes, approvals, and sign-offs. Small details compound into major problems that can sink hard-earned deals if the parties involved aren't careful. Making the matter worse, both parties are incurring significant costs for the legal council.

"I think what happens is often inexperienced attorneys will put their nose in the wrong areas," Linda Day Harrison, founder of TheBrokerList said. "They should be in the legal business, not the real estate business. It's not their area, they are there to look out for clients on the legal side but they don't know the market or deal points."

Finding ways to involve all of the parties in a commercial lease is the challenge at the heart of contract negotiation. The problem is, once a letter of intent is signed and the deal moves to the contract stage, the lawyer's role in the deal-making process can become muddled. The roadblock is often in the process, not the people. Every law office uses its own software and many track changes to contracts differently. Figuring out what was changed, what the new clause means, if the new verbiage fits the parameters of the deal, and what to counter with is a complicated process. It's why attorneys cost so much, but it's also what slows deals down dramatically. Things can get even worse when you're working with an attorney that doesn't specialize in real estate.

In the contract stage, the landlord, tenants, and lawyers are all on their own timeline, each being compensated differently. Tenant or landlord brokers working on commission get paid the same no matter how long the deal takes which creates conflicts with lawyers billing their time by the hour. It isn't that lawyers want to nickel and dime clients, either. Good lawyers are busy juggling many accounts, oftentimes they would prefer clients to do a bit of the grunt work of communicating with the other party. But once lawyers start to take the lead in the process the other parties tend to pull back. "Best to let the lawyers hammer out the verbiage."

Slow response times and multiple rounds of negotiations over edits can degrade trust, an important part of every deal. Having lawyers involved, particularly ones with subject area and geographic expertise, can add trust back to what can become a contentious process. Sophisticated document management tools are helping bring trust back to lease negotiations by creating a trusted record of any changes. But, these tools are not always standard practice and often deal makers and lawyers revert to the same technology-agnostic redlining processes that have existed for decades.

"I don't think lawyers across the board are yet as tech-savvy as they should be or as much as people expect in the next five years," D. Hara Perkins, a director focusing on real estate at the New York office of law firm Goulston & Storrs said. "I do think we will hit a point where it is the expectation of the lawyering job where you can handle the benefit of what tech has to offer. At this time, my firm's entire database is searchable. It would have quickly crashed years ago if you tried to search the entire database."

Having a party walk away from a leasing deal because they could not come to terms in a timely manner results in countless hours of wasted efforts for all parties involved. The amount of patience either side brings to the negotiation table has a lot to do with market conditions. Right now many sectors are seeing the kind of demand that does not motivate landlords to sit through lengthy back-and-forths about minor details.

"In today's world, speed is more important than ever, especially in industrial." Conrad Madsen, co-founder and partner at Paladin Partners, a Dallas-based real estate service firm said. "In the past, tenants had a gazillion options out there, they could take all the time they wanted to negotiate and get whatever they wanted but now, especially in markets on fire like DFW and other areas, speed is critical...speed is the biggest thing that kills deals."

There is an inherent friction between landlords and tenants in a lease deal, but there are ways to minimize it. More communication is always better. Clear expectations and deadlines for review and revisions are a good way to keep people accountable. Collaborating in a shared, cloud-based document is prevent file names like "counter\_lease-v2.03"

The dream is one full-stack platform to manage the entire leasing transactions, negotiations, and legal documentation for even the most complicated deals. The tools exist, but we still have a long way to go until they are universally adopted. The complexity of each deal, varying local and state laws, and the inertia of doing things the way they have always been done are all hurdles to change. Commercial real estate may be adopting new technology to help speed up certain aspects of the leasing process but until the entire negotiation process is improved, each deal will be fraught with potentially deadly delays.