

NEWS

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From: Real Estate Board of New York (REBNY)

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REBNY and Learning the Art of the Lease Negotiation

The Real Estate Board of New York presents popular Master Commercial Seminar on the intricacies of lease negotiation in the current market

March 7, 2008 – On February 26th The Real Estate Board of New York held its Master Commercial Seminar, “Negotiating in Changing Times,” at JRT Realty Group’s offices on Third Avenue which attracted more than 125 REBNY members and non-members. Moderated by Michael R. Laginestra, Vice Chairman of CB Richard Ellis, the stellar panel included: Andrew D. Levin, Senior Vice President of Leasing for Boston Properties; David Maurer-Hollaender, a Vice Chairman at CB Richard Ellis’ Consulting Group; Jonathan L. Mechanic, Esq. a partner of Fried, Frank, Harris, Shriver & Jacobson LLP and Chairman of the firm’s real estate department; and Raymond A. Sanseverino of Loeb & Loeb LLP, Partner and Chair, New York Real Estate Department, Chair, Commercial Real Estate Leasing Practice Group. REBNY only holds a few Master Commercial Seminars each year and all sell out quickly.

Mr. Laginestra began the seminar stating that “the event’s goal was to identify issues between a landlord and a tenant that arise in a lease negotiation and to identify any trends in the marketplace that would favor one party over the other in the transactions. It is not to resolve these issues.” The panelists formed two negotiating teams – two representing the owner (Mr. Levin and Mr. Sanseverino) and two representing the tenant (Mr. Maurer-Hollaender and Mr. Mechanic)– and discussed key items that are likely to arise in a hypothetical term sheet for a 55,000 square foot tenant in a Class A building in Midtown Manhattan. Some of the critical issues discussed by the panelists included lease terms and base rent, rent commencement date, operating expense escalation and real estate taxes.

Here is one point raised in the discussion that provides a glimpse into the complexity of the lease negotiations. The parties need to establish how much of the base rent is attributable to operating expenses and taxes and what is the base year for computing real estate tax escalations. These landlord’s property taxes change from year to year. The parties should be clear about how these cost increases or reductions are allocated and what is the base year for calculating this change. The panelist highlighted why this was important. A substantial and extended vacancy in a building could result in lower

property taxes. On the other hand, a new lease at a substantially higher rent than was being paid by the previous tenant could result in an increase in property taxes. On this issue our panelists noted that each party will negotiate for a base year that they think will benefit them. The landlord will want a base year in which there could be a large vacancy and taxes are low, so that future increases from a low tax year would be picked up by the tenant. The tenant on the other hand will want a base year in which occupancy and taxes are high so that a reduction in taxes as a result of a softening market will effectively lower their real estate tax burden. In a changing market you may not be able to determine which year is best, however, as our panelists stressed the choice one makes on this issue will have economic consequence for the tenant and the landlord.

“Our Master Commercial Seminars are a must for young brokers who want to enhance their professional development,” commented Steven Spinola, President of REBNY. “Our panelists are experts at the art of negotiation – they live and breathe lease negotiations. They have such a wealth of knowledge they are willing to share at these events, all young brokers should take advantage and learn a thing or two from the masters of the business.”

Pictured here are (left to right): Raymond A. Sanseverino, Andrew D. Levin, David Maurer-Hollaender, Jonathan L. Mechanic and moderator Michael R. Laginestra.