

## **Want to Avoid Implementation of New USPS Lease Forms for Your Building?**

The USPS recently completed a multi-year project to revise the lease forms it uses to lease post office buildings. Many of the changes in the lease forms promise to impose new costs and obligations on postal lessors. However, the application of normal contract law principles may permit postal lessors to avoid or at least delay the implementation of the new lease forms in the leasing of their buildings. This article will describe certain contract law principles which can make such delay or avoidance possible.

Postal lessors are familiar with the inclusion of renewal options in postal leases. What may not be as obvious is that the existence of unexercised renewal options which call for rental rates that are favorable to the USPS is a factor that can help a postal lessor to avoid or delay the use of newly issued USPS lease forms to replace currently existing lease forms.

Now that the USPS has finalized its new lease forms, AUSPL assumes that the USPS will be anxious to bring them into use for as many facilities as possible. That could mean that the USPS will contact lessors whose leases have yet to expire or are approaching expiration and attempt to substitute the new lease forms for prior lease forms. In doing that, the USPS (or CBRE on behalf of the USPS) could claim that it is merely attempting to put in place new forms the USPS considers to be “standard” without telling the lessor that the new forms are substantially more favorable to the USPS than the forms they would replace. The renewal could even be cast as the exercise of a renewal option but with an added request that the lessor voluntarily substitute the new lease forms for the old forms.

On a normal renewal (meaning a renewal that is not the result of the USPS’s exercise of a renewal option), lessors should know that everything is negotiable. That is always the case and means no lessor can be required in such a case to adopt the new lease forms. Such a lessor can negotiate changes in the forms that suit the lessor’s purposes. In all cases where such a lessor will use the new lease forms, the lessor should be sure to negotiate rental rates that are sufficient to reimburse to the lessor the additional costs the lessor will bear under the new lease forms, and provide the lessor a sufficient level of profit or return on investment.

Moreover, the existence in any lease of future renewal options with favorable rents the USPS would not want to change gives the lessor leverage to avoid changing to the new lease forms. That would be the case whether the request to change to the new lease forms were made at the exercise of a renewal option or any other time during the lease term.

For example, a lessor has no obligation to allow the USPS exercise a renewal option while at the same time changing the other terms of the lease to the terms in the new lease forms. If the USPS wishes to exercise a renewal option, it has only the specific rights granted in the renewal option in question. That right includes only the right to renew the lease at the specified rental rates for the specified time. It does not include the right to require a lessor to change other terms of the contract by agreeing to use new lease forms.

Any attempt by the USPS to cause a lessor to agree to substitute new lease forms for old lease forms would constitute a modification of the lease that must be acceptable to both parties. It would also mean the lessor in question would be free to renegotiate any terms of the lease the

lessor desired to change, including rents under future renewal options. Therefore, if the rents under future renewal options are favorable to the USPS, a lessor could make the USPS choose between changing the lease to adopt the new lease forms or preserving the renewal options with favorable rents.

Moreover, renegotiation of rent rates under unexercised renewal options would be entirely fair if a lessor were being asked to change his or her lease to adopt the new lease forms. Compared to currently existing lease forms, the new lease forms will impose new costs on lessors. It is only fair that, in such a case, rental rates for a lease renewal or under future renewal options should also be changed to permit the lessor to cover those additional costs.

By understanding their rights to renegotiate all lease terms at any time that lessors are asked to adopt the new lease forms, lessors may be able to avoid agreeing to those new forms. The USPS is unlikely to trade favorable rents under future renewal options to get a lessor to agree to new lease forms. If lessors are asked to use the new USPS lease forms for their leases, they should be sure to negotiate rents (including rents under future renewal options) that are high enough to allow them to perform their new obligations and assume the new costs imposed upon them by the new lease forms.