

BOMA Magazine

Legal-Ease: Going Green Without a Certification

May/June 2017 Issue

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A number of rigorous certifications are available to brand a commercial property as a green building, but for a variety of reasons, countless office buildings are not and will not be formally green-certified. The process of obtaining green building certification often can be complex and expensive, and debate exists as to who benefits from such certifications. Is it the landlord, due to increased asset value? Is it the tenant, due to reduced operating expenses? Is it your great-grandchild, who will breathe cleaner air? In most cases, all of these parties benefit in some way from green office buildings.

While people argue about who stands to gain the most, they argue even more about who pays. For this reason, a landlord may choose to forego a formal green building certification, but nonetheless implement sustainable practices.

Following are some ways to do that:

- **Provide a win-win structure for implementing energy-saving modifications and upgrades during the lease term.** In most office leases, utility costs are passed through to tenants, leaving little incentive for landlords to undertake capital improvements that reduce energy consumption. By allowing landlords to pass through capital expenditures that result in cost savings to tenants, both parties can come out ahead. In lease negotiations, the parties may argue about whether projected savings or actual savings allow for the pass-through. Additionally, landlords may seek the ability to pass through capital expenditures aimed at environmental sustainability (even if they do not reduce operating expenses), but this is open-ended unless tied to some standard, such as costs necessary for compliance with new laws or possibly even modifications customarily adopted by comparable buildings.
- **Consider separate metering or submetering.** When the lease structure allows for the pass-through of utility costs, an individual tenant may find that its efforts to reduce consumption are lost in the wash of building-wide utility costs. By submetering a specific premise, a landlord can continue to pass through the cost, while a tenant can take comfort in knowing that it is paying for its actual usage, rather than paying the building average. This approach cuts both ways, as a higher-than-average energy user pays less than its actual consumption when based on the building average. Additionally, parties may argue over who pays submetering costs, especially since leases often impose separate or submetering requirements only when the landlord alleges excess use by a tenant.
- **Use building rules to implement green operational practices.** A building doesn't have to be certified green to have a recycling program or to require that lights be turned off when not in use. These and myriad other operational requirements make for a green building—and make sense to both tenants and landlords. Such provisions are often set

forth in building rules attached as an exhibit to the lease. Most leases permit landlords to make reasonable changes to building rules following notice to a tenant, and as long as the changes reasonably relate to the existing rules, the landlord can use the rules to modify green operational practices during the term.

- **Make technology your friend.** Property managers can take advantage of technologies to help the building run more efficiently. Automated building systems and wireless controls allow managers to monitor building details in real time and take timely action to remedy problems. The sink doesn't need to leak for a week before the manager knows it's a problem. If the HVAC system isn't hitting its target temperature, the manager should know before the tenant complains. The earlier this information is available, the quicker a problem can be addressed and waste stemmed, while also reducing costs. The key is to make sure these technologies are used properly.

Landlords, tenants and future generations will benefit from the sustainable practices adopted in office leases. Formal certification is always an option, and it oftentimes is a valuable one. But, even if certification won't work for your building, that doesn't mean you still can't go green.

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