

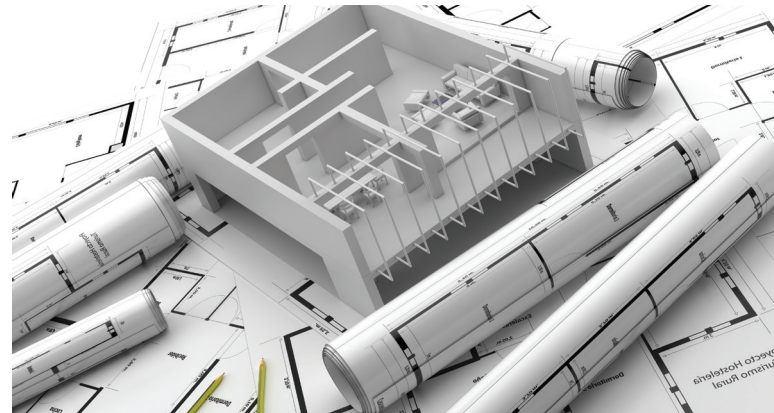
## WORK LETTER LANDMINES

**A**ttached as an exhibit to most commercial office leases is a work letter.

The work letter sets forth the procedures, requirements and timing applicable to the premises build-out, and it serves as the guide for ensuring that the space is built to a tenant's expectations and with the landlord's approval. Following are work letter provisions that should be carefully considered during the lease negotiation process. Ignoring the implications of these provisions may cause conflict in the landlord-tenant relationship.

### 1. ALLOWANCE PAYMENT

A letter of intent (LOI) generally notes the amount of tenant allowance as a per-square-foot figure or flat total. Rarely does the LOI provide detail as to how and when the

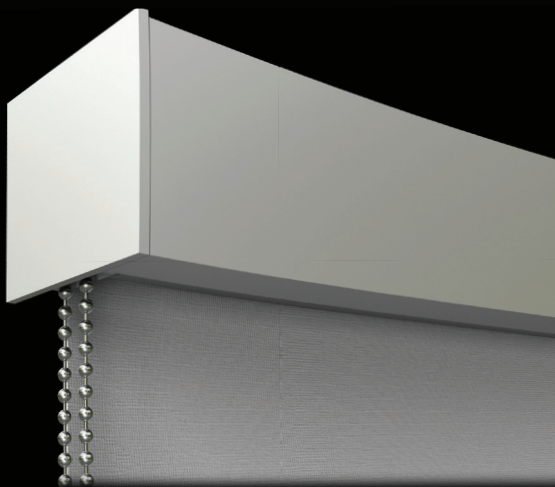


allowance is to be paid. The work letter needs to address frequency of payment (monthly, quarterly or lump sum upon completion) and what documentation a tenant must provide for release of allowance funds (certifications, lien releases and so on). The required documentation should be consistent with the frequency of payment, as final lien waivers cannot be obtained when work is ongoing. Landlords should include a date by which a tenant must request payment of allowance funds so that a landlord's obligation

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To ensure that a premises' build-out proceeds in accordance with a schedule and meets lease target dates, **the work letter should include tight, clear and reasonable deadlines** by which each side must review and approve submissions.

to pay the allowance does not last forever. The work letter should be clear about what can be paid from the allowance. Can a tenant use the allowance for moving costs, furniture or equipment? If the work letter is not clear, an early dispute may ensue.

## 2. TIMING FOR PLAN APPROVALS

The work letter should clearly set forth the various levels of plan approval

required. Typically, a tenant must provide a space plan and then detailed drawings are prepared. Regardless of who is responsible for completing the work, both the landlord and tenant should have approval rights with regard to the space plan and drawings. To ensure that a premises' build-out proceeds in accordance with a schedule and meets critical lease target dates, the work letter should include tight, clear and reasonable deadlines by which each side must review and approve submissions. Any disapproval should include clear reasons and require the submitting party to resubmit the revised plan within a set number of days. The work letter also should include similar deadlines for change orders. Property managers must be aware of these deadlines and enforce them to avoid unnecessary delays.

## 3. INITIAL IMPROVEMENTS VS. ALTERATIONS

The work letter generally relates to the initial build-out of the premises, and the body of the lease typically contains additional provisions governing alterations and modifications a tenant may pursue during the lease term. Different requirements often apply to initial improvements and alterations.

For instance, the lease may provide that a tenant has no obligation to restore initial improvements at the end of the term, but restoration may be required for some or all alterations. When processing a tenant's request to modify the premises, it is important for the property manager to understand whether the initial improvement or alteration provisions apply.

## 4. CONTRACTORS

Landlords may require that certain work, particularly structural or building system modifications, be performed by specific contractors. This should be provided in the work letter. If a tenant is performing initial improvement work, the work letter should identify approved contractors by name and clarify the extent to which the tenant has the ability to select its own contractors.

## 5. ADDITIONAL COSTS

Preparing space for new tenants burdens a building. The work letter should address whether a tenant is responsible for paying costs ancillary to the build-out and move in. For example, will the tenant be charged for use of the freight elevator or loading dock? Are there additional security costs related to the move? Is the tenant required to pay a supervisory fee in connection with improvements and alterations? The property manager should be aware of any such costs that should be passed along to the tenant.

By carefully considering work letter provisions prior to lease execution, landlords and tenants can avoid landmines that may appear from unclear build-out, modification and management expectations regarding the property at hand. ■

**ABOUT THE AUTHORS:** *Desmond Connall and Katherine Noonan are members of the Real Estate Development and Complex Transactions Group at Ballard Spahr LLP in Washington, D.C. Visit [www.ballardspahr.com](http://www.ballardspahr.com) for more information.*

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