

A 10 STEP PROGRAM

FOR THE  
SUCCESSFUL  
OFFICE MOVE



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**THE SCENARIO:** The CEO, COO or other “Big Cheese” of your company walks into your office one day and out of the blue announces: “We need to move. We must relocate our entire office (or your entire company) from This Comfortable Place to That Far-Away Land. Given your demonstrated talents, reliability and proven track record of success, I am delegating this entire project to you. I am counting on you to get it done; do it right; and do it now.” Then, without much further discussion, she leaves.

**THE CHALLENGE:** Aside from “Property Law 101,” you have never thought about — much less worked on — any real estate-related transaction. Now, you are in charge of moving your entire office into a new building and potentially even a new jurisdiction. How should you best proceed with *the move* to ensure that you are getting it done, doing it right, and doing it now?

**THE 10 STEP PROGRAM:** Consider implementing our 10 step program, which lies out with simplistic detail the course you should follow to make the transition as flawless and stress-free as possible.

**THE DISCLAIMER:** We offer no money-back guarantee. All moves are riddled with stress and difficulties. All legal documentation associated with a move is cumbersome, boring and difficult to review, negotiate and bring to completion. Depending on whether you have leverage in your specific marketplace (i.e., are you operating in a tenant/purchaser market or a landlord/seller market?), the landlord/seller with whom you will be negotiating will be moderately or horrifically difficult throughout the entire documentation process. Everyone in your office will be mad at you at one point or another in connection with the move, as you will be the focal point for all move-related hysteria and other ill will.



## Step 1: The Programming Requirements

Understand, with great detail, your company's programming requirements; interview key players on staff to identify all of the critical issues relating to your new office space. Include the following questions, among others that are specific to your company's needs, in your interview:

- Why is the company moving?
- What specific objectives must be achieved in connection with the move?
- What are the space needs of the various clients that you serve within your company?
- What are the financial parameters that you must work within? Does your company intend to lease or purchase the new space?
- What is going right now in your current office space that should be replicated after the move?
- What should, and can, be improved upon after relocating?
- What are your company's growth projections and long-term goals? How do these affect the company's immediate and future space needs?
- What are the timing constraints for the move?

## Step 2: The Relocation Plan

Begin drafting a relocation plan. Ideally, this outline should incorporate the information that you collect from discussions with your various clients within the company, as well as anything else you can think of that relates to the move. Your relocation plan should include the programming requirements you have identified, a timeline and a checklist of all matters that you must track to ensure the move goes smoothly. Build latitude into your timeline since proceedings will likely take longer than anyone can anticipate. Negotiation of the transaction documents is almost always more protracted than anyone would think could be humanly possible. The permitting and build-out process is also almost always riddled with delay and takes longer than anticipated. Update your relocation plan and checklist on an ongoing basis (throughout the day of the move, if necessary) to ensure nothing falls through the cracks.

## Step 3: The Space Committee

Form a space committee, including those members of your organization that you know are reliable and will follow through and get things done. Choose committee members who have varying talents, such as creativity, detail orientation, discipline and boundless energy. They must also be responsible and unconditionally dependable. Set a schedule for regular space committee meetings and hold members accountable for tasks based on the timeline included within

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your relocation plan. Remove people from the space committee if they are not making a meaningful contribution. The move isn't about harmony and furthering goodwill. It's about getting it done, doing it right, and doing it now.

## Step 4: The Right Broker

Retain a very good real estate professional who specializes in representing "end users" (tenants or purchasers) in property transactions. Whether you are going to lease or purchase your new space, it is essential that you are represented by an effective broker who "gets it" from the end-use perspective. Seek referrals for the best broker doing business near the move.

## Step 5: The Request for Proposal (RFP)

Depending on the size of your office and the scope of the move, consider engaging in an RFP process to select your broker. The key points to cover in an RFP include a:

- short profile that briefly describes your company and its industry, business focus and objectives;
- description of your company's occupancy needs;
- detailed request for information, including:
  - o an executive summary of the brokerage firm that provides an overview of its capabilities;
  - o a description of the transaction strategy the brokerage firm would employ;
  - o a company overview including specific information about the brokerage team members who would manage your account and work with you on a day-to-day basis;
  - o references from other tenants or purchasers; and
  - o a description of the structure and formula used to determine the broker's compensation.

## Step 6: The Real Estate Broker Interview

Interview several real estate brokers to identify which one has the best fit with your company. The key objective is to gain a clear understanding of how the broker generally views transactions and how she would typically approach your proposed transaction. Does the broker have a clear "end-user" perspective and an organized thought process? Will she process the numerous issues that will be associated with your transaction in a manner that works in conjunction with the overall goals and objectives of your company? During the course of the interview, the broker should identify the specific team members from her office that will be involved and inform you of their qualifications. You should

also assess the broker's "geography." Is she a national, regional or local player? Where is the prospective broker's primary jurisdiction? Where does the brokerage company do most of its business? If your transaction is national in scope (i.e., you are relocating your company from one jurisdiction to another), the brokerage company must be geographically positioned to effectively service your deal and your needs.

The interview process provides you with an opportunity to determine the number and type of transactions completed by the broker and then evaluate whether they are on point for the deal you will be pursuing. Has the broker represented businesses similar to yours? Does the broker understand your industry and, in particular, how your industry looks at real estate transactions? You should also try to ascertain whether the broker is knowledgeable about the financial and legal implications of a proposed transaction. Can the broker understand how the lease clauses ultimately impact your company's bottom line?

Does the broker appear to have your company's best interests in mind or is the broker only focused on executing a transaction and collecting a commission? Has the broker researched your company to develop an understanding of not *only* the type of business in which you are engaged, but also your primary customers? Finally, you should assess whether the broker has strong relationship-building skills. Ask the broker how long she has worked with her signature clients. Without a strong interest and focus on building long-term relationships, the broker should not be a match, since you will be working with the broker on virtually a daily basis for the duration of the transaction, which could literally go on for years.

### Step 7: The Brokerage Agreement

Before you engage and begin working with your broker, you should sign a brokerage agreement. The brokerage company will typically have its own form of agreement. Review it to make sure that it includes the following key points:

- definitive term for the agreement (avoid automatic renewal periods);
- clarification that the relationship between the broker and your company is only that of independent contractor, and that the broker has no authority whatsoever to bind your company in any manner or on any basis;
- confirmation that the broker is responsible at her sole expense for all costs incurred in her representation of your company pursuant to or in connection with the brokerage agreement;
- scope of the broker's services and responsibilities, which should include:
  - o serving as your company's exclusive tenant-rep leasing or acquisition broker to assist in the analysis of your company's space requirements;

- o identifying buildings which present satisfactory solutions to your company's space needs;
  - o representing your company in negotiations with your current landlord regarding an extension, restructuring, renewal or early termination of your company's existing lease; and
  - o analyzing all reasonable options and negotiating with other landlords or sellers regarding the terms of space acquisition.
- commission to be paid to the broker by the landlord or seller (and not by your company), and a confirmation that the broker will enter into a separate agreement for the payment of that commission with the landlord or seller after you review and approve it.

### Step 8: The Letter of Intent

Once you have selected your broker and signed the brokerage agreement, you should inform her about your company's specific space needs. Communicate details about your specifications, parking needs, lease term parameters, budget constraints, critical dates, and any other special considerations relating to your company's intended use of the space (i.e., environmental concerns or heavy equipment usage). Next, the broker will identify those buildings that might suit your company's needs, review the properties with you, and send to each applicable landlord/seller a request for a lease or sale proposal. This request will often be extremely tenant/purchaser-oriented and will ask for many concessions that the broker realizes the landlord/seller is not likely to grant.

The only binding document you **should enter** into is the actual and final **lease or purchase agreement** for the transaction.

The landlord/seller will typically respond with a non-binding, generic proposal containing the basic economic terms for your transaction. For a lease, these would include the rent, length of time and financial details, including the rent concessions the landlord is willing to provide. For a purchase, these would include the purchase price, the required deposit, the study period (for your evaluation of the physical condition of the building) and the closing date. A discussion process will ensue until the parties reach a mutual agreement on the basic terms for the lease or purchase agreement.

It is critical that the letter of intent expressly state that it is non-binding, with the possible exception of the confidentiality clause and any exclusive negotiation clause that

would require the landlord or seller to deal solely with you for a definitive period until the lease or purchase agreement is executed or the transaction abandoned. The only binding document you should enter into is the actual and final lease or purchase agreement for the transaction.

### Step 9: The Purchase Agreement or Lease

Once the letter of intent is finalized, you will quickly move forward to the negotiation of the definitive transaction document. Consider hiring a specialist lawyer with specific transactional real estate expertise in purchase agreements or leases. Try to find a lawyer who has a reputation for being both aggressive (i.e., one who will zealously protect your interests) and emotionally intelligent (i.e., a “deal-making” and not a “deal-breaking” lawyer). Investigate the lawyer representing the seller or the landlord in the transaction to get a sense of the type of negotiations you will face — particularly in this instance, information is power. Tell your lawyer about your specific objectives and draw special attention to any hot button issues that may arise as part of the transaction (that the lawyer would not have any other way of knowing). Actually read the transaction documents and provide timely and meaningful comments to your lawyer. Keep track of your programming requirements and, if appropriate, make sure they find their way into the documents. Breathe. The negotiation process almost always takes longer than anticipated and will likely throw you off schedule.

### Key Points for a Lease Include

- *Premises*: Define the exact space to be occupied.
- *Basic Rent*: Specify the annual basic rent, and when and by how much it will escalate.
- *Additional Rent*: Detail your obligations to pay your proportionate share of common area expenses, real estate taxes and insurance, for example.
- *Tenant Concessions*: If any concessions are generally being provided by landlords to tenants in similar buildings based upon current market conditions — like tenant improvement dollars, assumption of tenant’s existing lease obligations, rent concessions such as free rent or structured rent, and moving cost dollars — include these in your lease.
- *Build-out Allowance*: Specify the amount the landlord will contribute towards the costs of improving the premises to suit your company’s needs.
- *Security Deposit*: Define how much you will be required to post and the form of the security deposit (i.e., cash or letter of credit).
- *Usage*: If you will be using the space for more than general office use, specify how you will be utilizing the space.
- *Term*: Specify lease term and any rights in your favor to extend the lease.

- *Termination Rights*: Include any lease termination rights, such as early termination or lease buy-out provisions.
- *Parking*: Specify the number of parking spaces you will be entitled to use and whether these are reserved or generally available.
- *Expansion Rights*: Include any rights you’ll need to expand the premises.
- *Sublease and Assignment Rights*: Address any requirements that may be necessary to sublease the premises or assign the lease.

### Key Points for a Purchase Agreement Include

- *Property*: Define the *exact* property and building (including all building components) to be purchased with clarity; attach a legal description of the property.
- *Purchase Price*: Specify the purchase price for the building, including any potential increases.
- *Earnest Money Deposit*: Specify the amount of earnest money and any required increases in the deposit. Indicate the form of the deposit (cash or letter of credit), and ask if the deposit is fully refundable under all circumstances prior to the end of the feasibility period. And after the end of that time, is the deposit

## ACC Extras on . . . Real Estate

### Quick Reference

For material specific to real estate, please visit the real estate practical area page at [www.acc.com/practiceareas/realestate.cfm?paid=73](http://www.acc.com/practiceareas/realestate.cfm?paid=73).

### Practice Profile

- *Collaboration Between Corporate Legal and Human Resources Departments on Non-Litigation Matters* (2007). The relationship between legal and human resources departments is crucial to the success of companies as they compete in the marketplace. Strong collaboration between these departments helps companies navigate the complex web of regulatory, personnel and employer liability management, and benefits and compensation policies, while minimizing the likelihood of disputes that can detract from a corporation’s mission and affect its bottom line. This profile focuses on the in-house attorney’s role with regard to the human resources function on matters not in litigation.  
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fully refundable in the event of a seller default, failed condition to closing, or other circumstance in which the purchase agreement is terminable (such as an event of a casualty or condemnation)?

- **Feasibility Period:** Specify the amount of time you will be afforded to evaluate the building you are intending to purchase. At the end of this feasibility period, you should have the full and complete right to proceed under or terminate the purchase agreement for any reason — or no reason.
- **Closing Date:** Designate the day and any extension rights in favor of you or the seller.
- **Conditions to Closing:** Clarify that the purchase agreement will include customary conditions to closing, including:
  - o quality of title to the property;
  - o absence of any tenants of the property (other than those that have been identified) and from whom you will receive estoppel certificates at closing;
  - o property documents delivered to you as part of your feasibility review being true, accurate and complete; and
  - o condition of the property being the same as it was at the end of the feasibility period.

## Step 10: Think Positive Thoughts

Everyone knows that moving is universally ranked among the ten most stressful experiences that we face during the course of our lifetimes. The strain of a move is even more intense for companies than for individuals, given the magnified number of lives affected by a corporate move. Consequently, for step 10, we call upon the power of positive thinking. When all else fails, if you keep your thoughts focused and upbeat, you will experience less stress. Towards that end, we call upon wisdom offered many years ago by Henry Ford:

*“Obstacles are those frightful things you see when you take your eyes off your goal.”*

*“Coming together is a beginning. Keeping together is progress. Working together is success.”*

Our “10 Step Program for the Successful Office Move” is designed to offer you the foundational tactics that can help mitigate the stress of your company’s move and best position you to get it done and done right. Best of luck! 🚩

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