

## **Area Calcs - Like an Annual Physical**

By William B. Tracy, NCARB, MBA

Disputes about measurement of square footage in real estate often start when the tenant for some reason actually measures their own space and has a cardiac event when they discover that there are fewer square feet in their suite than are shown on the lease. What normally happens can take several paths ranging from a tenant tutorial on how rentable area is figured under the measurement standard cited in the lease to the tenant's engaging a lease auditor, and occasionally a lawyer, to address alleged deceptive measurement practices. If this occurs after several years on a lease, there is promise of a pot of gold for the tenant in the form of rent abatement. A tenant's interest in methods of area calculations then can become suddenly very acute.

Most of these altercations can be prevented by more discussion of measurement methodology at the time the lease is negotiated and by making sure the lease includes clear language on how rentable area is measured. Unfortunately, this doesn't happen often enough. Landlords and their leasing agents are loath to bring up measurement methods during lease negotiation for fear it will cool a deal. After all, it's complicated. Attorneys are sometimes unfamiliar with measurement methods and often overlook including adequate provisions in the lease agreement. Leasing space is rarely a core competency of a tenant and, without the aid of an advisor, they usually fail to ask the right questions about measurement methods during lease negotiations.

Recently, while sitting in a doctor's office awaiting my annual physical, I realized that area calculations are like blood tests. The chemistry of LDLs, HDLs, triglycerides and the like is complicated and not something a normal healthy person takes the time to study. Your motivation to learn about it becomes strong only after a cardiac event or your doctor's warning that you are at risk for one. Likewise, a tenant's interest in floor area measurement methodology becomes important when its impact on their bottom line is appreciated.

At the time the lease is signed, tenants generally fail to ask the first question: "What measurement methodology is used?" If the measurement method is not cited in the lease, and is not otherwise documented, this is where most future measurement disputes have their root cause. A sophisticated tenant may have their square footage checked by their space planner or a tenant representative, and this may uncover tenant misconceptions about measurement methods. However, unless a tenant's understanding and agreement on measurement method is well documented, the door to future rent abatement lawsuits is still open.

The most sophisticated tenants will want to understand not only what measurement standard was used but also how it was applied to the building. They will want to review what spaces in the building were classified as building common and floor common areas and how Rentable/Usable ratios were determined. They will demand documentation in graphic format of the precise boundaries of their leasehold.

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You stand the best chance of remaining healthy if you master the sciences that affect your health. Likewise in leasing, the way to prevent future altercations about square footage is to ensure that:

1. The tenant fully understands the measurement method employed,
2. The tenant fully understands how that method was applied to the building and their suite, and,
3. This understanding is clearly documented in the lease agreement.

Even if a tenant does not want to know the gory details of measurement method at the time the lease is signed, having the details well-documented and at least referenced by the lease will help avoid future measurement misunderstandings.

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