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ROBINSON NEFF + RAGONETTI, PC

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Would Co-Working Work in Your Building?

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If you own or operate commercial real estate, you probably have heard of co-working, office sharing or other similar terms. There is a debate in the commercial real estate community as to the extent co-working space will affect the larger market, but it appears it will have a material impact. According to a recent announcement, the iconic Lord & Taylor department store on Fifth Avenue in New York City is being sold to a WeWork joint venture to house WeWork's headquarters and WeWork co-working space.

Shared space allows flexibility without exposure to large rent obligations for startups, small companies, entrepreneurs and people between jobs. These individuals and small companies also want to be around others to learn from them and to generate business leads (that is, to collaborate). Co-working spaces may also provide a sense of community or synergy, leading to greater productivity.

With the congregation of these smaller, innovative companies, larger firms are also interested in having a presence in a co-working environment to identify trends, share knowledge and potentially generate clients.

Here are a few things an owner should consider when entering into a legal relationship related to co-working or space sharing.

Who is or could be involved?

- “Owner”: The owner of the real estate, which could be office, retail, industrial/distribution, event or exhibition space, or even a commercial kitchen.
- “Occupant”: The occupant of the space, the actual user. This could be a company, an individual or a small group of people. The Owner and the Occupant may enter into arrangements directly.
- “Operator”: A company whose business is to provide co-working space. The Operator leases space from the Owner, and then in turn, enters into agreements with the Occupants.

Who is entering into the agreement?

- If there’s an Operator, then it would likely be a fairly standard lease between the Owner and the Operator (although the subleasing provisions should take into account the Operator’s agreements with the Occupants). This may be the easier and more stable solution for the Owner, but it also may leave revenue on the table.
- If there is no Operator, then the Owner is entering agreements directly with the Occupants. These agreements could be leases, but are more likely to be licenses, memberships or subscriptions.

Pros and Cons of Various Documents.

If the Owner is entering into agreements directly with the Occupants, the Owner might consider these factors:

- Lease: The benefit of a lease is that it is longer-term and is easier to enforce. The downside is it does not work well with several different Occupants using a single common space.
- License: A license provides some flexibility to both Owner or Operator and the Occupants, in case the Occupant’s business is not successful. This can be very similar to a lease, but it may be revocable. This may be a good choice if the Occupant is using a specified space (like a specified desk or a single office) and also has rights to a larger common area and amenities.
- Membership or Subscription: A membership or subscription arrangement may be the most flexible, especially if there are a variety of offerings to the Occupants. However, the membership or subscription arrangement requires some additional documentation by the Landlord.

What is being Offered?

- Space. Co-working spaces can offer a suite with one or more offices, just an office, a specific desk, or the right to use a desk (but not any specific desk). In the retail context, this could be a room off a larger space, a specific stall or portion of the larger space, or an unspecified stall or space.
- Amenities: Co-working spaces provide amenities such as conference rooms, common kitchens and potentially parking. In the food service context, the Owner

or operator may provide common dishes and flatware and even handle alcohol sales. Amenities in the office context also include consumable products like coffee, beer and printing. The Owner or Operator does need to consider how to manage overuse of these consumable items. Amenities may also include events, like networking parties, yoga classes or art installations.

What does the Occupant pay?

For a lease, it could be similar to other leases, where the Operator or Occupant pays base rent and reimburses Owner for taxes, insurance and operating costs. In a license, membership or subscription, however these costs may be too much to track and recover. It may be easier to have a fixed charge, although the Owner or Operator may want the right to charge for excess use of amenities.

Conclusion.

Shared space may completely disrupt commercial real estate or it may be just a piece of the real estate landscape, but it will likely exist in some form going forward.

Otten Johnson attorneys in our Real Estate practice groups have substantial experience with leasing agreements. For more information on this Otten Johnson Alert or for help evaluating your current situation, contact any of the attorneys in the Real Estate practice group. For a listing, [click here](#).

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