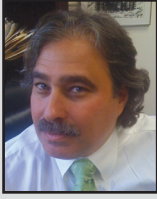




## legal

# Examining the importance of pass alongs and taking the time to review leases

**hs Howard Stern**



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With the economy being in the current state of flux that it is, there has never been a more important time to review all of your leases to see if you have missed billing your tenants for additional unpaid tenant expenses, commonly known as Pass Alongs (PAs).

Pass alongs are expenses passed along, usually to commercial tenants, arising out of and associated with the maintenance and running

of your property, of which a pre-negotiated percentage is passed along to your tenants, usually on an

money that the lease will increase by on an annual basis.

Pass along expenses include (but

advertising or marketing budgets, the property insurance, premises heating & air conditioning expense,

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annual basis. These expenses are not to be confused with common area percentage charges which should, likewise, be included in your commercial leases. Sometimes, in lieu of an annual percentage increase, some owners agree to a specific amount of

are not limited to), an annualized specific per square foot amount for electric consumption, real estate taxes, salaries and benefits of building personnel, security personnel and security cameras, improvements or general maintenance to the property,

building and parking area lighting expenses, local business improvement or other specialized district or area taxes, private garbage pick up, water and sewer charges, snow removal, gardening and planting expenses. The list goes on. Each

property has its unique needs and expenses. Each municipality has and continues to seek new and creative ways to "partner up" with owners—at no risk to the local government. By that I mean try and come up with new fees and licensing requirements and additional taxes and get the owner to pay to increase its contributions to government coffers. Unlike business, government has no qualms about killing the goose that lays the golden eggs. Hence being able to recover some of those additional expenses can be the difference between a profitable and unprofitable year for your property.

I have recently reviewed leases for clients only to find that, in some, the leases contained, unbeknownst or forgotten by a client, PAs. Clients have bought property without actually taking the time to review the leases and that is bad practice. In some cases, employees were sloppy or lazy and if there is no system (usually included in most common real estate computer programs) in place to remind the owner which leases provide for what annual increases, those increases are forgotten.

Now is the perfect time to take the time to review each and every lease you have entered into. See if you have billed for all allowable PAs. I am certain you will find leases that you thought had no PAs in them that do. And when you send out the bill to your tenants, make sure you follow the terms of the lease and bill tenants immediately. Even if not required, provide back up with each bill to take away a tenant's ability to delay payment. Of course, discuss any unbilled PAs with your legal counsel if you have not billed a tenant for more than a reasonable time. You may be barred by virtue of the statute of limitations in some instances from billing now for those long unbilled expenses. Expect to discuss payment plans with some tenants where you have been lax in billing the PAs.

If your leases don't provide for PAs make a mental note and send out an email to your agents to make sure that all future leases provide for them. Bearing in mind that, on each new lease you renew or enter into, your requested increases should take into consideration the economic times, the location and desirability as well as the class of the property being leased. Always be realistic. I see too many upscale neighborhoods with for rent signs because of the unreasonable demands and expectations of the rental agents. Your mortgage and taxes and other expenses have to be paid. No one discounts for an empty space.

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