

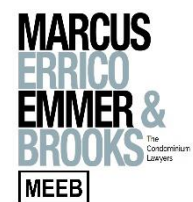
Condominium Rooftop Wireless Telecom & Solar Leasing and Licensing

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Condominium's Due Diligence:

- Does the Board have the power to enter into a lease/license/easement agreement?
 - Generally, yes. Under G.L. c 183A § 10(b)(1), the Board has the power to control the common areas and facilities of the condominium.
 - The Board should, however, confirm that the Master Deed and Declaration of Trust do not require unit owner approval for the installation of rooftop equipment.
 - Even if a unit owner vote is not required, the Board may want to consider gauging unit owner interest.
- Ask the Tenant whether it has entered into agreements with other condominiums and consider connecting with the condo to find out whether any issues arose.

Condominium's Due Diligence, cont.

- Inspection prior to installation:
 - The condominium should require that the roof be inspected by a qualified structural engineer prior to the equipment installation to ensure that the building can withstand the added weight; and the area of the roof where the installation will go is in good condition and free from cracks or punctures. Document the condition with photographs.
 - Determine whether the installation impacts the roof warranty and, if so, how.
 - Will the installation require puncturing the roof membrane? What equipment, if any will be directly affixed to the roof?

Lease Agreement vs. License Agreement

- The Board retains greater control if it enters into a license agreement.
- The difference between a lease and a license.
 - A lease exists where the owner agrees to turn over exclusive possession of the property to another for some period of time.
 - A license, is an agreement that gives the licensee permission to use the land only at the owner's discretion. A license is freely revocable, and does not provide for protection for the licensee against interference by the licensor.
- However, Tenants are not going to want to sign an agreement where they may be required to leave in 30 days. Therefore, most agreements (whether leases or licenses) will be for longer term; 10, 15, 20 years, with extension terms.
- What is the appropriate term length for a Board to enter into?

Agreement Specifics

- **Building Access / Maintenance / Repair:**
 - **Access Rights: When and How?**
 - The Board should consider the impact on unit owners in negotiating the scope of access to the building and roof.
 - Access should be limited to normal business hours with exceptions only in the case of emergencies.
 - The Board should also consider rules/restrictions applicable to the Tenant when on-site. For example:
 - Require workers to wear booties to protect carpeting
 - Flooring should be covered to protect it from foot traffic and equipment
 - Elevator walls should be covered to protect them from damage or limit use to service elevator
 - Doors/access points will remain closed and not be propped open and unattended

Agreement Specifics, cont.

- **Maintenance**
 - If applicable, the agreement should include the anticipated maintenance schedule so that the Board is aware of when, and with what frequency, the Tenant will be on-site performing maintenance.
 - The agreement should also include information pertaining to who performs the maintenance - the Tenant, an outside vendor, etc.
- **Removal and Reinstallation**
 - The agreement should anticipate and address the removal of equipment in the event repairs to the condominium roof become necessary.
 - Several scenarios should be anticipated including: (1) roof repair necessitated by damage caused by the rooftop installation; and (2) repairs due to normal wear and tear.
 - The Board should insist on language requiring an evaluation of the roof by an independent contractor to determine if the leak/other damage was caused by the equipment installation.
- It is important to consider the impact that this type of equipment will have on the roof and how those impacts will be mitigated and dealt with during the term of the agreement and upon decommissioning of the equipment.

Agreement Specifics, cont.

- **Installation Upgrades:**
 - This provision is critical as telecommunications providers and solar companies require flexibility to upgrade and swap out equipment as technology changes and improves.
 - Are the tenants allowed to upgrade? What does that include? - additional space, antennas, equipment?
- **Termination:**
 - Tenants will try to retain broad termination rights, however, Landlord's should try to limit the carrier's termination to matters that are outside the tenant's control, i.e., loss of permits, interference, etc.

Agreement Specifics, cont.

- **Insurance:**
 - The Board should require proof of liability coverage and that it be named as an additional insured on the Tenant's policy.
 - Consult with your insurance broker for recommendations on coverage limits.
- **Interference:**
 - Telecommunications:
 - Need a line of site, and also will require that their antennas are close to the rooftop edge or on the façade.
 - Usually require no radio frequency interference from subsequent tenants.
 - Solar:
 - Shadowing. Solar entities may require an easement in areas on the premises to avoid future development to avoid the possibility of shadowing.

Agreement Specifics, cont.

- **Metering and Utilities:**
 - The manner in which utilities are billed and paid is key.
 - Generally, the only utilities required by telecommunications entities are electric and telephone.
 - However, solar companies require a much more complex metering set-up:
 - Behind the meter or tied into the existing meeting.
 - Net metering vs. load reduction behind the meter

Benefits

- **Revenue:**
 - **Telecommunications:**
 - Generally, telecommunications agreements involves a straight rental fee, but there are other non-carrier telecommunications companies that offer other forms of rent:
 - Rooftop management agreements.
 - Colocation revenue sharing.
 - **Solar:**
 - Can be straight rent or reduced electricity rates, or a combination of both.
 - Other ways to go green without installing solar:
 - Community Solar / Net metering / On-Bill-Credits

Possible Deal Breakers Terms

- Term of the Agreement
- Termination
- Access
- Upgrade capability
- Rental fees

Questions?

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