LETS GET LOUD
a/k/a
Noise and Vibration Clauses in a Commercial Lease

Presented by Larry Haber
Colgate Real Estate Advisors LLC
Chief Executive Officer
Attorney & CPA

www.freeleaseanalysis.com
www.colgaterea.com
Overview

Introduction... “How the Rhythm is Going to Get Ya’!” (Gloria Estefan)
Chapter 1... Gathering of the Vibes
Chapter 2... You Make Me Wanna Shout
Chapter 3... All We Are Saying is Give Peace A Chance
Chapter 4... We Don’t Need No Voice Control
Chapter 5... The Music Never Stopped Versus the Noise & Fun Police
Chapter 6... The Cone of Silence
Bottom Line... Come On & Feel The Noise- Negotiating noise lease provisions properly.

Sensible Solutions for Leases During Challenging Times
Larry Haber is both managing partner of the commercial real estate department of Abrams Garfinkel Margolis Bergson, LLP and the Chief Executive Officer and founder of Colgate Real Estate Advisors LLC. On behalf of Colgate, Larry represents both tenants and landlords, primarily focusing on commercial lease negotiations, restructurings, reviews and audits as well as tenant retention, relocation and due diligence advisory services. Larry takes great pride in providing his clients with the power to make knowledgeable decisions concerning their business and individual needs. Combining decades of commercial real estate ownership with a professional background in law, accounting, commercial brokerage, property management, planning and development, Larry and his team can be the difference in helping you navigate the challenging times that lie ahead in your life or business. Having sat on all sides of the negotiating table, Larry firmly believes that he and his team of real estate professionals have an increased business understanding of the mindset of all parties to a transaction, and consequently, a competitive edge that will only enhance his client’s bargaining position.

In addition to maintaining a law practice for nearly 25 years, Larry was a co-founding partner of a full service commercial real estate firm specializing in the development, ownership, management and leasing of commercial and high-rise residential properties. As General Counsel and Chief Administrative Officer, Larry’s primary responsibilities were the review, preparation, negotiation and analysis of commercial leases, construction, purchase, sale, operating, acquisition, AIA and employment agreements as well as loan documents and other related commercial agreements. Ancillary to the aforesaid legal responsibilities, Larry was intimately involved on the business side in the acquisition, renovation, leasing and management of the firm’s portfolio, including the upgrading and repositioning of the properties in the then emerging markets of Newark and Harlem (including the building where Former President Bill Clinton maintains his offices).

Larry lives on Long Island with his wife and their four sons. In addition to his passion for them, his work, sports and music, Larry devotes a significant portion of his energy co-chairing and actively participating in charities focused on raising awareness, tolerance, acceptance and sorely needed funds for children with autism and other disabilities. Please refer to www.facebook.com/BraveGoals4Autism or www.ayabany.org or the trailer to the short film "Making a Difference" for more information (2010 New York International Independent Film and Video Festival Best Educational Documentary - Trailer to Film: www.youtube.com/user/AYABANY).

Noise, Vibrations, Music, and how a Tenant, if it does not comply with the obligations it may have relative to the foregoing, as Gloria Estefan would put it, “How The Rhythm Is Going To Get Ya’!”

The rules a landlord may promulgate and how a tenant can help itself by abiding by those roles or dealing with them in advance.

• A well drafted lease with regards to noise and what a tenant might want to ask of it’s landlord, architect &/or contractor to help it with noise mitigation and absorption as well as sound quality within its space.
Unless you are a Beach Boys fan, as a general statement in a building or in your space *there is no such thing as a Good Vibration.*

Landlord’s, at a minimum, will and should include language in their leases requiring that they reserve the right to prescribe the weight and position of all machines, mechanical equipment, and ventilation and similar systems, with the foregoing placed and maintained by Tenant at their expense, in settings sufficient, in Owner’s judgment to absorb and prevent vibration, noise and annoyance.

As a tenant, needless to say you will have some of these items, and their appropriate placement within your space, their design, and how vibration and noise can be minimized is something that must be addressed when designing and building your space.

**Simply put, whether a retail or office tenant, vibration absorption materials and planning need to be part of the equation.**
A sure fire recipe to lose customers in a restaurant, bar, or other public establishment is having bad acoustics.

Some people not only like to hear themselves talk and think but also to hear the conversations of those across the table.

Whether on the ceiling or walls, please know that there are some great decorative echo absorbing panels made from recycled cotton products which do the job when it comes to minimizing reverberations.
From a landlord’s perspective, a Tenant's right of quiet enjoyment will be subject to among other things Tenant not creating any noise levels which shall interfere with the quiet enjoyment of the tenants occupying other portions of the Building.

• Some leases require a Tenant to promptly notify Owner, in writing, of all noise complaints or summons and to submit a proposal reasonably satisfactory to Owner as to how to handle same and assure that such complaints shall not recur.

As a tenant or as their broker or counsel, it is imperative that you be aware of the subtle yet potentially offensive and/or narrow language a lease contains relative to the foregoing, and try and make your obligations to comply as broad as possible to counteract the narrow and costly requirements a landlord may impose upon you within the lease.
Chapter 4
We Don’t Need No Voice Control

Sorry to disagree with the lyrics of Pink Floyd, but whether you have a professional practice or any type of business where certain conversations are of a confidential nature and not for all in the workplace to be heard, sound does in fact travel.

Ways to mitigate noise are to:
• sheet rock the ceiling
• extend the walls upwards to the top of the structural ceiling
• install extra insulation in the walls
A well drafted lease will contain a myriad of rules combating noise and vibrations.

Many will not only include language stating that those rules constitute a material inducement for Landlord to enter into the Lease and, but for this inducement, Landlord would not enter into the Lease, but also impose a number of remedies with “teeth” to get a rude tenant to comply. Examples include:

• The right to restrain noncompliance by injunctive relief and/or lease termination

• The lack of immediate rectifying performance by a tenant allowing a Landlord to install sound and vibration attenuation countermeasures or take other reasonable steps to mitigate such disturbance

• In the event that any legal action is brought against Landlord by any municipal authority due to noise emanating from the Premises or the Building, Tenant shall pay Landlord all of the reasonable attorney's fees and disbursements incurred by Landlord in defending such action.
Tenant’s should pursue parallel paths & look for spaces that have newer windows and technological bells and whistles which help alleviate airborne sounds while simultaneously imposing obligations upon a landlord to install soundproofing and absorption materials.

-Just one small example of this is simply having your landlord install solid wooden doors for each office versus that of hollow doors.
For More Information:

Larry Haber
Attorney & CPA
larryhaber@colgaterea.com
C: 917-362-9413
O: 212-993-8681
Website: www.colgaterea.com
www.nyleaserestructuring.com
www.freeleaseanalysis.com
Twitter: @theleaseguru

1430 Broadway-17th Floor
New York, NY 10018

6800 Jericho Turnpike
Syosset, NY 11791

5900 Wilshire Boulevard-Suite 2250
Los Angeles, CA 90036

Sensible Solutions for Leases During Challenging Times

Please call for details regarding a FREE LEASE ANALYSIS and preliminary audit of your current commercial lease!

CIRCULAR 230 DISCLOSURE: Pursuant to Regulations Governing Practice Before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

Attorney Advertising & Disclaimer: The content of this presentation is intended for informational purposes only. It is not intended to solicit business or to provide legal advice. Laws differ by jurisdiction, and the information on this presentation may not apply to every reader. You should not take, or refrain from taking, any legal action based upon the information contained in this presentation without first seeking professional counsel. Your use of the presentation does not create an attorney-client relationship between you and Colgate Real Estate Advisors and/or Abrams Garfinkel Margolis Bergson, LLP and/or Larry H. Haber, Esq., CPA.

Prior Results Do Not Guarantee Future Success!