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# CAM Reconciliation Season

*by Steven D. Sallen*

It's that season again. No, not tax season, although April 15th has recently come and gone. No, not baseball season, although the Boys of Summer are back at it again. It's CAM Reconciliation Season. What, you've never heard of CAM Reconciliation Season? Well, that is the time of year when commercial landlords often send common area maintenance, tax and insurance expense reconciliation statements for the preceding calendar year, and demand payment of any shortfall, or refund (or at least book a credit for) any overcharge, and possibly adjust the amount of CAM payments due for the balance of the current lease year. Typically, CAM reconciliation statements are sent by landlords in net-lease situations within 60 to 120 days after the end of the preceding calendar year.

If commercial landlords have budgeted properly and their tenants have paid timely monthly or quarterly estimated payments, then CAM reconciliation should not be a significant monetary event for either landlords or tenants. Ideally, landlords should budget their expenses a few percentage points over actual, anticipated expenses based upon historical and predicted operating conditions, and they should bill those expenses monthly throughout the year so that, as expenses are incurred, sufficient funds are readily available for timely payment. This close budgeting is beneficial not only to the landlord, who assures himself of having sufficient funds on hand throughout the year to meet expenses as they are incurred, but tenants also benefit. Tenants no longer need to live in fear of the dreaded annual reconciliation statement, or interim expenses billing, for major unanticipated expense items.

Landlords get themselves in trouble with CAM reconciliation statements in two typical ways.

First, some landlords fail to properly budget or plan for coming expenses. In such

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cases, they are likely to run short of money, and be forced to front expenses out of pocket (or borrow on open lines of credit), and then seek reimbursement from tenants at a later date. Second, some landlords alienate tenants by taking an overly aggressive approach to expense pass-throughs, and find themselves fighting with tenants over what is, or is not, properly chargeable as a common area expense.

Whether you are a landlord trying to decide what to charge your tenant, or you are a tenant who feels aggrieved by certain charges you are being billed for, the first, second and third resource you must consult in order to determine if a charge is proper is the lease, the lease, the lease. And, of course, the expense pass-through provisions of a lease are not always written as clearly as they should be, or as reasonably as they should be. So, landlords should use this CAM Reconciliation Season as a reminder to review their standard lease forms, and cleanup language concerning what they can properly bill to tenants, and when those billings can be sent, when such billings must be paid, and what are the landlord's remedies when disputes over CAM billings arise. Most tenants don't maintain a standard lease, as they may occupy just one or a small handful of lease locations. All the more reason for tenants, now, to focus on their leases and fully understand what they can and cannot be properly charged for.

I recently received a telephone call from a tenant who operated a day care establishment in a leased location in Florida. He wanted to know if his landlord's Christmas holiday office party was a proper item of CAM expense. Regardless of my personal feelings over whether a landlord ought to charge his tenants for getting his secretary and maintenance man drunk on a Tuesday afternoon, the answer to this question lies in the lease, not in my, or his, sense of what is right and what is wrong. Once that lease is reviewed, there should be little doubt that either the landlord should pat himself on the back for having a highly aggressive lease clause, or the tenant should tell the landlord that he better look more carefully at what expenses are properly chargeable under the lease. But, oftentimes, disputed expenses are disputed because the lease is not clear; if it were, the parties wouldn't be in dispute.

Common areas (no pun intended!) for dispute of CAM expenses often include expenses that go beyond mere maintenance. Capital repairs and replacement are a frequent source of landlord-tenant friction. When does a parking lot repair (it's also pot hole season here in Michigan) go from being a mere maintenance item, to a major replacement? How many pot hole repairs equal a replacement? And is

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parking lot replacement a CAM expense or a capital replacement for which the tenant is not liable, or is only liable for an allocable share based upon the relationship between useful life of the improvement and the number of years remaining on a lease? The same calculus applies when considering HVAC system repairs. Is a new air conditioning compressor a repair or a capital replacement? What about replacement of ingress/egress doors with new barrier free design; is this a repair or a capital improvement?

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