Insights: Alerts

DOGE Issues Directive Regarding GSA Leases

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Introduction

The U.S. federal government, through the United States General Services Administration (GSA), is the largest tenant in the country, currently leasing approximately 150 million square feet of office space and paying over $5 billion in annual rent.[1] This does not include other government leased properties such as land, warehouses, antenna sites, and the like. This marks a significant decline from its peak in 2012, as the GSA has since actively pursued efforts to reduce the size of its leased footprint.[2] This reduction is likely to accelerate with recent reports that the "Department of Governmental Efficiency" (DOGE) has issued a mandate that regional GSA offices should begin terminating leases on "all of the roughly 7,500 federal offices nationwide". [3]

The apparent directive, issued by a group with unclear governmental authority, adds to growing uncertainty surrounding broader government cost-cutting and creates potential conflict with a recently implemented federal return-to-office policy, which necessitates adequate office space to support the returning workforce.[4] Furthermore, as discussed below, termination of leases is not only onerous on landlords, but also largely improper under the respective leases.

This legal alert aims to help landlords navigate this confusion by helping them maximize their leases and minimize the potential for unwanted terminations, to the extent possible.

GSA Lease Considerations

Government contracts (other than leases) typically have a termination for convenience option to hedge against changes in circumstances. However, the GSA standard lease form,[5] while a government form, does not contain such a broad termination for convenience option (at least during an initial firm term). This exception is due to GSA leases typically being long-term leases that often include landlord obligations for building renovations and modernization projects throughout the term, which landlords would not agree to without a firm term.

Only a small fraction of these GSA leases are scheduled to expire in 2025, so in order to meet its directive, the GSA would need to take affirmative action to terminate other leases. While it is unclear how the GSA proposes to achieve this, there are a few avenues that could be pursued:

1. GSA leases frequently include a provision granting the government the right to terminate the lease early after a specified date. Once that date has passed, the GSA may exercise this negotiated termination option, often without incurring additional costs.
2. The GSA could attempt to claim a breach by the landlord and terminate for default. A valid justification for this option would be necessary and the government would bear the burden of proof in that instance, but if there is a breach, even if minor, the GSA could use that as a pretext for termination. Landlords need to make efforts to ensure they are complying with their leases to avoid an unwanted termination for breach. If the GSA terminates for default, it is important that the landlord know and exercise appeal rights under the lease agreement, if

applicable. Additionally, landlords should be wary of executing any "notices" of termination as they may contain language agreeing to waive any rights or damages the landlord may have.

3. GSA leases typically permit the government to assign and sublet the premises. However, pursuing this route would present significant challenges, as it would require identifying an assignee or subtenant outside of the government. Additionally, this option would leave the GSA with lingering obligations inconsistent with the mandate to terminate the lease promptly.
4. The GSA might attempt a voluntary lease buyout, or otherwise settle with a lease termination agreement. The amount of the buyout or settlement is subject to negotiation and requires the landlord's agreement. While a landlord should consider all circumstances surrounding their lease, the directive to terminate leases might provide grounds to reject such an offer or negotiate a higher payment.
5. It is stated that the GSA has never defaulted on a lease, including paying rent during prior government shutdowns.[6] While this precedent cannot guarantee future actions, default scenarios would appear unlikely. If the GSA were to default, landlords should carefully consider the challenges associated with litigating against the government.
6. Short of terminating the lease, the GSA lease form has an optional provision titled "Adjustment for Vacant Premises" that provides for a reduction in the rental rate if the premises are vacated during the term. Landlord should review their leases to confirm whether that provision is present.

If a termination comes to pass, landlords should ensure that all personal property has been removed and the premises restored to the requirements of the lease. Landlords should carefully review any turnover documentation provided by GSA to ensure it accurately reflects the condition of the personal property and the premises.

Conclusion

This directive has created significant and understandable uncertainty and concern among landlords with GSA leases. It would be prudent for landlords that lease to the GSA to review their applicable leases to ensure all their obligations are current and complete. Further, landlords should consult with legal counsel to address any questions to ensure that they can proactively protect their rights and be fully prepared to respond to any potential actions by the GSA.

Footnotes

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[1] U.S. General Services Administration, Leasing Overview, https://www.gsa.gov/real-estate/real-estate-services/leasing#:~:text=We%20are%20the%20nation's%20largest,across%20the%20country.; Trepp, DOGE Looks to Cut GSA-Leased Office Space: Quantifying the Impacts on Key MSAs, (January 24, 2025), https://www.trepp.com/trepptalk/doge-looks-to-cut-gsa-leased-office-space-quantifying-impact-on-key-msas

[2] Colliers, The Shrinking Footprint of the Nation's Largest Tenant, (October 15, 2024), https://knowledge-leader.colliers.com/charles-dilks/the-shrinking-footprint-of-the-nations-largest-tenant/#:~:text=Since%20the%20end%20of%202012,MSF)%20across%20the%20United%20States

[3] The Associated Press, Trump and Musk demand termination of federal office leases through General Services Administration, (February 4, 2025), https://apnews.com/article/trump-musk-gsa-terminate-office-leases-f8faac5e2038722f705587c8dd21ab26

[4] U.S. Office of Personnel Management, Deferred Resignation Email to Federal Employees (January 28,

2025), https://www.opm.gov/fork

[5] Available at: https://www.gsa.gov/system/files/Global%20Lease%20Template%20L100%20%28Oct.%202023%29%20C.pdf

[6] Easterly Government Properties, https://easterlyreit.com/wp-content/uploads/2015/05/Easterly-Government-Properties-Messages.pdf

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