

Funding and implementing a lease compliance programme

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Wendy Scott-Napier

Assistant Secretary, Maryland Department of General Services, Office of Real Estate, USA

Wendy Scott-Napier has over 25 years' experience in the real estate industry, including project, operations and transaction management. She has served as the Assistant Secretary for the Maryland, Department of General Services, Office of Real Estate since 2015, overseeing the state's commercial leasing portfolio, totalling nearly 6mft² with a US\$120m annual expenditure, and oversight of leasing for the state's owned portfolio totalling 5mft². She also presides over the management of the land acquisition and disposition unit, the lease construction and lease compliance units, the state's valuation and appraisal unit, and administers various real estate projects on behalf of client agencies. Wendy holds degrees from Stevenson University and the University of Baltimore. She has received leadership training from the U.S. Army War College and has taken numerous courses in real estate from the National Business Institute and the MD Institute of Continuing Professional Education for Lawyers. Currently, Wendy is pursuing a Master of Public Administration degree from the University of Baltimore.

ABSTRACT

This paper seeks to offer a case study of overseeing lease compliance functions for governmental tenants housed in commercial lease office space. Lease compliance is defined as appropriate landlord and public tenant performance in leased facilities, which includes ensuring tenant satisfaction and tenant adherence to facility guidelines, as well as landlord responsiveness to facility issues that occur. The Maryland Department of General Services

(DGS) developed an initiative several years ago to fund, implement and design a lease compliance programme to ensure that landlords are properly maintaining commercial office space for state functions and that state agencies and their clients are adhering to DGS tenant policies in commercial facilities. This paper shares the fee structure, billing process, design of the programme and functions of the compliance team which have helped provide financial oversight and ensure the health and safety of state employees and visitors. The lease compliance programme includes training of on-site tenant agency staff to help monitor building conditions and resolve minor facility issues that occur. Additionally, the programme also established a rating system for facility issues depending upon the severity of the event that has occurred in relation to life, health and safety of the employees and visitors at the site. The assigned ratings of 'emergency', 'priority' and 'routine' determine what action must be taken by a tenant agency and how quickly a response will be provided by DGS. This information was shared at a National Association of State Facility Administrators' Conference in May 2023.

Keywords: lease compliance, commercial office, tenant, landlord

INTRODUCTION/BACKGROUND

The Maryland Department of General Services (DGS) is responsible for managing an office lease portfolio of approximately 300 leases comprising 6mft² of space located



Wendy Scott-Napier

Maryland Department
of General Services,
Office of Real Estate,
300 West Preston Street,
Ste. 601,
Baltimore, MD 21201,
USA

E-mail: wendy.scott-napier@maryland.gov

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across the state. There are roughly 25 different agencies represented in the portfolio, with 40 per cent of the leases being for the Department of Human Services. Managing this portfolio is of critical importance to ensure that agencies are housed in safe, secure and sanitary locations, with properly functioning building systems. DGS refers to these facility oversight functions as lease compliance activities. Lease compliance activities include conducting annual inspections of lease facilities to ensure both state tenants and landlords are fulfilling their respective obligations in leased facilities. On a daily basis, it involves responding to building system failures, tenant complaints, landlord concerns with tenant abuse, weather events, etc.

Outside of providing safe and secure workspaces for state agencies and the citizens that utilise their services, there are financial repercussions associated with tenant abuse and landlord non-compliance and default under required lease provisions. On the tenant abuse side, if agencies are not kept in check, landlords may opt not to renew critical leases, forcing agencies to relocate. Relocations can be costly and disruptive to agency operations. On the landlord non-compliance side, when agencies are not able to operate due to unsanitary or unsafe conditions, the delivery of critical services to the public may be affected. This means that tax dollars are being expended for unusable facilities.

For tenants in commercial facilities, there can be challenges at times in connecting with landlords to resolve facility issues that occur, with landlords being “slow to respond to requests” “not responding at all”, “not following up”, [or] “not being available to discuss issues”.¹ For agencies managing these tenant relationships, it is important to have a designated team with facilities management experience to ask the right questions, offer solutions and hold landlords accountable.

Historically, DGS had a team of leasing agents who were responsible for the full scope of procurement, management, negotiation and compliance activities associated with the commercial lease portfolio. These employees were essentially generalists who had real estate negotiation experience but lacked in-depth facilities management experience. As the portfolio grew without a commensurate staff increase, the compliance activities were put on the backburner, unless a serious facility issue occurred. Additionally, the more rural and distant locations were often overlooked, and inspections were only completed every few years. This meant at times that the required repaint and carpet provisions were not always being adhered to by landlords, because regular inspections were not being conducted. The staff limitations created challenges in managing lease compliance matters, with minor issues turning into major ones.

FUNDING A LEASE COMPLIANCE PROGRAMME

After several years of declining lease facility conditions, DGS arrived at a new mechanism to help expand staffing and improve operations. DGS worked with the State Department of Budget and Management to develop a lease oversight fee that could be assessed to agencies housed in leased facilities. Each agency would be assessed a fee of US\$.10ft² of commercial and inter-governmental leased space occupied. For an agency housed in 2.5mft² of space, this fee would be approximately US\$250,000 per year. For the entire 6mft² portfolio, DGS would receive US\$600,000 annually. While this does not fully support the entire lease compliance unit, it does support a portion of the salary budget and critical activities. The state’s budget agency ensured that the lease oversight fee would be built into each agency’s annual operating budget and would enforce this fee being

paid to DGS. Agencies receive an annual invoice from DGS and submit the required reimbursement. The lease compliance fees are programmed into the DGS budget to be used to support staff salaries for lease compliance officers, training costs, travel expenses for overnight or longer stays, and fleet costs.

IMPLEMENTATION/DEVELOPMENT OF LEASE COMPLIANCE PROGRAMME

With a funding mechanism established, DGS began hiring designated staff to ensure proper oversight of leased facilities. A compliance manager was hired along with a compliance officer and a compliance assistant. This initial three-member team would be increased over time to become a staff of six with a chief, compliance manager, three compliance officers and a compliance assistant. With the team established, the management team established seven phases and priorities to develop a proactive approach to compliance issues. These included: (1) dividing the state into four geographic areas and assigning a compliance manager or officer to each area; (2) training and identifying key discipline strengths across the DGS team including knowledge of mould, air quality issues, heating and cooling, plumbing and electrical problems; (3) creating ‘Lease Compliance and Enforcement Guidelines’ with a rating system that included targeted response times to be provided by DGS; (4) creating ‘Lease Compliance Procedures and Practices’, with a focus on state tenant practices in leased facilities; (5) training on-site agency personnel to act as a front line for lower-level compliance issues; (6) establishing a schedule of inspections to ensure that each location was toured once annually to verify compliance by both the landlord and tenant; and (7) developing a process to address landlord default in leased facilities. These priorities will be reviewed below.

Geographic assignments and facility maintenance expertise

The first step of dividing the state into geographic areas with an assigned compliance officer was important to help provide appropriate coverage and responsiveness for issues that arise. Having designated portfolios allowed staff to become familiar with the facilities, agency staff and landlords within their designated regions. As facilities issues occurred, the compliance officers were mindful of facility conditions, the agency missions being housed in the facilities and the appropriate landlord or property management staff that could help resolve problems expeditiously. The agency staff appreciated knowing who their designated compliance officer was to call with questions and concerns about both tenant and landlord performance on site. Once the team had been assigned specific regions, the DGS management staff began training and identifying key discipline strengths across the team in facilities maintenance areas. Training was focused in the areas of mould, indoor air quality, and heating and cooling issues, which are typically the most common recurring problems in facilities. Building this bench strength with the in-house team proved invaluable when landlords are not being responsive to requests for remediation.

Lease compliance and enforcement guidelines

The next critical phase was creating the ‘Lease Compliance and Enforcement Guidelines’² with a rating system that included targeted response times by DGS. The guidelines established timelines for ‘emergency’ complaints that would require a closure of the facility; ‘priority’ complaints for problems that could disrupt agency missions and required prompt attention; and ‘routine’ complaints for issues with preventive or scheduled maintenance items such as minor plumbing leaks, janitorial issues, temperature concerns, etc. Figure 1 lists the response time goals.

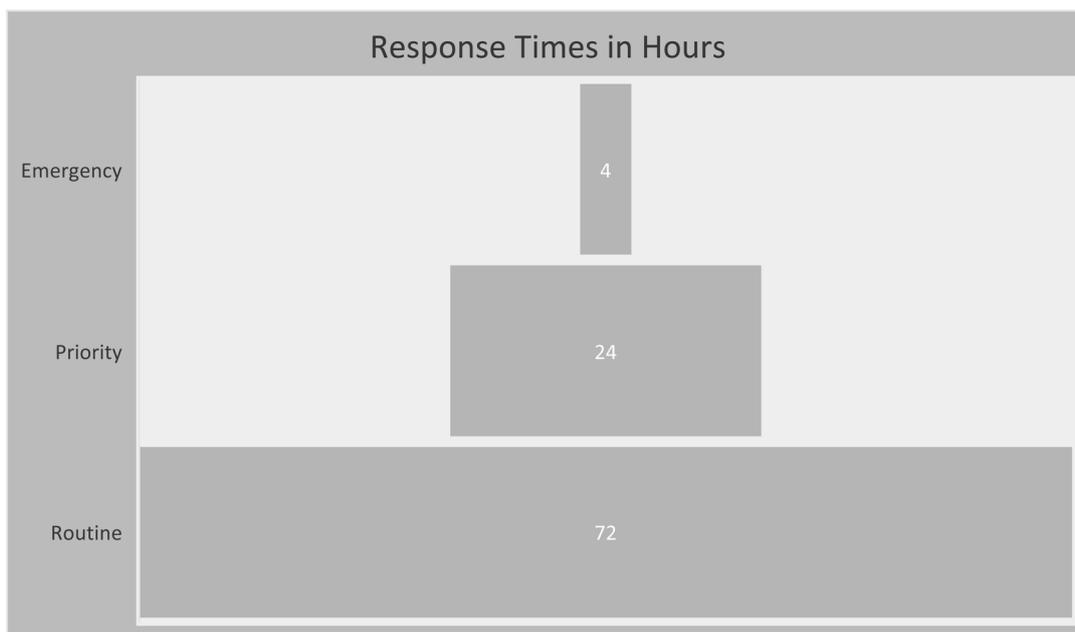


Figure 1 Response time goals

Lease compliance procedures and practices

With the guidelines in place, including the complaint rating system and response commitment by DGS, the management team developed 'Lease Compliance Procedures and Practices', with a focus on state tenant practices in leased facilities. These best practices were designed to ensure that facilities would remain professional and safe working environments for employees and visitors. If the procedures were adhered to, it would serve to reduce costs associated with tenant abuse claims, along with workplace accidents and injuries. Agencies were advised that annual inspections would be conducted to verify that these procedures were being adhered to.

Training tenant agency staff

Having developed written guidelines, procedures and practices, training agency staff was critical to establish the protocols and expectations for tenants housed in leased facilities. Agencies were asked to designate staff members to act as front-line

compliance and facility managers and work in concert with DGS. These staff members would enforce the procedures at their respective locations and when 'routine' issues arose, they would attempt to resolve these directly with the landlord's on-site property management team. If the property management team was not responsive, then DGS would be contacted to request action. This additional support allowed DGS to focus on significant and recurring compliance issues and deploy its resources more efficiently.

Schedule of annual facility inspections/standardising of inspection form

The next phase of the compliance programme development was to establish a schedule of inspections to ensure that each of the nearly 300 lease locations were toured once annually to verify compliance by both the landlord and tenant. Along with this schedule, a standardised inspection form was created to inspect state facilities using a consistent, systematic approach (see Figure 2).



Office of Real Estate – Lease Compliance Unit
 300 W. Preston Street, Rm: 601 • Baltimore, Maryland 21201
 Telephone: 410-767-4300
Compliance Email: dgs.leasecompliance@maryland.gov
DEPARTMENT OF GENERAL SERVICES
OFFICIAL FACILITY INSPECTION NOTICE

Agency:	Address:
Agency Staff:	City, State, Zip:

Purpose

It is the mission of the DGS Lease Compliance Unit to ensure that all leased facilities are in compliance with the State of Maryland General Performance Standards and Specifications (GPS). This inspection report will serve as an official notice if any area is found to be non-compliant. Any area that is found to be in non-compliance, the responsible party (either the landlord or occupying agency) will be required to submit a corrective action plan to DGS ORE within 3 days of this notification. All corrective actions must be completed by the deadline given in this report. Any questions or concerns regarding this inspection notice should be directed to the Lease Compliance Unit at the above email address and phone number.

Building Structure/Exterior	Compliant	Non-Compliant	Comments
Compliant – no obvious signs of infrastructure issues	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Roof – No Obvious Concerns	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
All rain gutters in place	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Landscape – grass cut, weeds removed etc.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Signs of Water Infiltration			
Ceiling tiles stained, wet or leaking?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Excessive condensation (HVAC)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Signs of other water infiltration (e.g. stained dry wall, stained flooring)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
HVAC*			
Current Air Temperature	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Reading: _____ (Requirement: 73°F +/-2°F)
Humidity Levels	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Reading: _____ (Requirement: 50% +/- 5% Cooling/ no less than 25% heating)
Boiler	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Certificate expiration date: _____ Last inspection date: _____
Maintenance			
Elevator Properly Operating	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Elevator Certificate Expiration	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
All lights properly working	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Carpet is in good condition	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

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Paint is in good condition	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
There is no wall damage	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
There are no other repairs needed	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Fire Safety*			
Fire Extinguishers Valid	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Expiration Date on Tag: _____
Emergency Lights Operable	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
No Space Heaters Found	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
No unauthorized appliances found (mini refrigerators, microwaves, burners,	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Fire Suppression System has been inspected (sprinkler, fire alarm)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Janitorial			
VCT & Carpet Cleaned and in good condition.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Restrooms are clean and appears sanitary.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Other janitorial issues	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
COOP Plan			
Agency has copy of COOP plan on site.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agency representative information updated.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

MINOR FINDINGS	CURE DATE
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

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MAJOR FINDINGS	CURE DATE
1.	
2.	
3.	
4.	
5.	

NOTES/COMMENTS

*****DGS ORE – Office Use ONLY*****

Overall Inspection

Good – No findings

Satisfactory – No major findings and no more than two minor findings

Unsatisfactory – At least one major finding or more than two minor findings

DGS ORE Compliance Officer Signature	Date
Agency Representative Signature	Date
DGS ORE Compliance Manager Signature	Date

Certified Mail Number: _____ Copy Sent to Landlord On: _____

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Figure 2 Sample standardised inspection form

The report covers the following areas: infrastructure concerns, water infiltration, heating and cooling, elevator, general maintenance, fire and janitorial issues. The findings identified in the report were required to be corrected within 10–30 days depending upon the severity of the issue. Thereafter, if the issue was still unresolved, a cure letter would be issued. For the remote mountainous area of the state, inspections were performed at designated times of the year to avoid inclement weather conditions.

Consistent follow-up on landlord default issues in leased facilities

Once the aforementioned lease compliance initiatives were in place, DGS focused upon developing a consistent standardised approach to landlord default issues. The ‘Addendum A, Standard State of Maryland Lease General Conditions’ document governs landlord default issues. Section 8.4 addresses the failure to repair facility issues and permits the tenant to make all necessary repairs or perform the required maintenance and charge the landlord for such repairs and maintenance including deducting the costs from the rent, abating the rent and/or abating operating expenses and real estate tax payments until such time as the cost is repaid. Section 16.4 states that unless otherwise provided, a landlord has 10–30 days from the receipt of a written cure notice to resolve the matter. If the landlord fails to resolve the matter, then the state as the tenant may hire its own contractors and the landlord must reimburse the state for the expended costs plus an administrative fee of 15 per cent. An ultimate remedy for the state is to terminate the lease for default by the landlord and relocate.

Facility issues can be discovered through three primary means. These include observation by an onsite agency staff member, a DGS annual inspection report, or notification by the landlord of an unforeseen system failure, facility issue or emergency event that

has occurred. The initial step is for either the agency or DGS to discuss the matter with the landlord verbally or by e-mail and request a resolution. The DGS inspection form can also be used to initiate action following an inspection. Following the initial discussion, the first cure letter is issued requiring a resolution within 10–30 days, as stated previously. If the time period elapses without a resolution, a second cure letter is issued and informs the landlord that they are now in default status. Once a landlord is found to be in default, any efforts to renew a lease are typically put on hold.

As per Figure 3 statistics, DGS has observed that as staffing levels have increased for the compliance programme, the number of cure letters has been reduced. This is attributed to having more staff to work closely with landlords and diligently follow up on the resolution of facility issues after the first cure letter is issued, thus preventing the need for a second cure letter notifying a landlord they are in default. It is also recognised that minimal staffing in the past did not allow for consistent follow-up on issues, which caused minor issues to become major ones and required that default letters be issued.

Data has been provided for the most recent five-year period from fiscal years 2019–2023. In fiscal year 2019, a new chief and additional staff were hired to expand the compliance programme. The additional staff members have helped ensure that typically only one cure letter is needed to resolve a facility issue, and landlords are responding timely without the need to place the lease in default status.

Following the seven-phase implementation of the lease compliance programme, an additional enhancement was made in the area of compliance documentation management.

Compliance documentation management

At the close of the 2019 fiscal year, the newly hired chief did an assessment

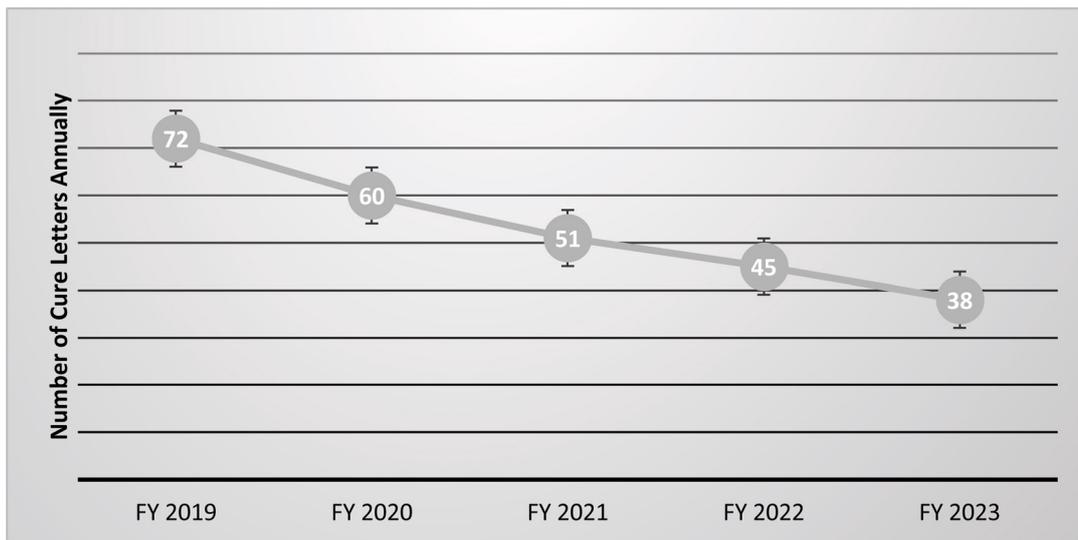


Figure 3 Review of cure letters issued

and determined that there were eight critical compliance documents required by the state lease performance standards that were not being submitted annually as required. A summary of these documents is shown in Table 1. Updated guidance was issued to landlords advising them that the annual certification documents would be requested in January and must be submitted by 15th February each year. With a large influx of compliance documentation, additional support staff were identified to verify and upload the information into the state’s electronic lease management platform during this time period each year.

With the implementation of the lease compliance programme and subsequent staff increases, the compliance efforts by DGS have continued to evolve and improve lease facility conditions for state agencies. While DGS has received positive customer service reports from agencies, customer service surveys have not been administered. Although no customer service surveys exist, DGS did begin tracking the lease compliance metrics in fiscal year 2019.

Table 1: Annual compliance documents

Annual compliance documents required

- Roof inspection
- Elevator certifications
- Heating, ventilation and air conditioning (HVAC)/ maintenance/filters
- Pest control
- Fire extinguishers
- Fire alarm
- Fire sprinkler
- Electrical system

Annual report tracking compliance statistics

Table 2 shows the annual report tracking statistics for the Lease Compliance Unit beginning at the close of the 2019 fiscal year after a new chief was hired and staffing resources were increased. It is noted that these tracking metrics did not begin until midway through the 2019 fiscal year, and that fiscal years 2020 and 2021 were significantly affected by the COVID-19 pandemic. There was a significant increase in e-mails in 2021 due to numerous compliance reports for COVID-19 occurrences in offices and

Table 2: Annual report tracking statistics

Fiscal year	E-mails	Phone calls	Site visits	Cure letters
2019	850	550	145	29
2020	1,096	680	165	60
2021	4,370	1,566	220	31
2022	2,272	1,121	361	80
2023	1,700	1,050	350	45

resulting requests for extra cleaning services. Fiscal year 2023 brought staff changes with two new team members joining DGS, following staff retirements. This resulted in lower e-mail and call volume, although the team was still able to meet the annual inspection schedule.

CONCLUSION

Managing lease facilities can be challenging for governmental entities. A balance needs to be struck between minimising tenant abuse of facilities and ensuring that landlords remain accountable in providing safe and secure workspaces. For states with minimal staffing assigned to oversee both lease management and lease compliance functions, Maryland's case study of creating a designated compliance programme may be the right solution. States should consider imposing a lease oversight fee on agencies housed in commercial space to fund the programme and support staffing efforts. Another critical component is training on-site agency staff

to act as first responders in dealing with routine compliance issues, before involving the compliance team.

Looking forward, as artificial intelligence (AI) becomes more integrated and landlords more widely embrace facility management (FM) systems, the role of a compliance manager may evolve further. Additionally, as telework continues to become more widely accepted, commercial office portfolios may decline and states may identify new strategies to enforce compliance in lease facilities.

REFERENCES

- (1) Halvitigala, D., Murphy, L. and Levy, D. (2011), 'The Impacts of Commercial Lease Structures on Landlord and Tenant Leasing Behaviors and Experiences', *Pacific Rim Property Research Journal*, Vol. 17, No. 4, pp. 560–583.
- (2) Maryland Department of General Services (DGS), 'Lease Compliance and Enforcement Guidelines', available at https://dgs.maryland.gov/Documents/RealEstate/LeaseComp_EnforceGuide.pdf (accessed 4th December, 2023).