



Commercial Real Estate Services

Important Commercial Lease Terms

Before entering any negotiations with a commercial landlord, it's important to have professional representation, below are typical commercial lease terms you should expect to see in a commercial lease. Professional representation provides you the good working knowledge of commercial leases that should also help you negotiate a better contract and avoid legal issues down the road.

Rent Clause

For almost any business, but especially smaller businesses, the amount of rent expected monthly is one of the most important issues when it comes to a commercial lease. While rent may seem fairly straightforward, there is a good deal of negotiating room available, even if the rent itself is already established. For example, in your rent clause you may want to negotiate:

- Automatic rent increases - what they're based on, when they are in effect and how much the increase should realistically be.
- Tenant improvement deductions, whereby the landlord agrees that approved improvements to the building will result in rental decreases.
- How much of the landlord's operating costs will be passed on to you.
- Establishing a method for dealing with unanticipated rent issues and increases.

Rental Rate

The dollar amount that Tenant agrees to pay for possession and use of the premises. The rental rate is typically calculated on a per square foot basis by month or year and is typically quoted as a gross amount or as an amount net of operating expenses such as common area maintenance (CAM), taxes and insurance. For example, rent may be quoted at \$20 per square foot triple net (NNN) per year with operating expenses totaling another \$10 per square foot per year. Rent could also be quoted at \$30 per square foot gross per year with no additional charges for operating expenses.

Description of the Premises Clause

The description of the premises clause is crucially important, so make sure that it accurately describes what you intend to rent. If you are renting an entire building, then this may be fairly straightforward and could simply be the building's address. However, if you are renting just a portion of the space, you should make sure that the lease describes that space in sufficient detail.

It may also be helpful to address "access" issues in this clause, to ensure that you, your employees and your customers have easy access to your rented property. Other items you may want to consider mentioning in the description include shared areas, such as conference rooms, storage rooms, and parking.

Parties Clause

The listing of the parties to the agreement is a fairly straightforward clause, but the key thing to watch out for is the use of correct business names. One of the primary reasons for using businesses, and not doing business in a person's name is to shield individuals from liability. Make sure that your business name, not your actual name, is on the lease.

Term Clause

The term clause can seem fairly straightforward as well, but requires more of your attention than you might think. Many lease terms begin when they are signed, and in your case, that may be well before your business is actually up and running. Even if a landlord agrees that no rent is due until you move in, other terms of the lease may become effective immediately, such as the need to carry insurance. The requirements of these terms can be expensive, especially for a new business. The best approach is to write in several start dates for different obligations under the lease - such as when to move in, when rent is first due, when you need to have insurance, etc.

Use and Exclusives Clauses

Use and exclusive clauses are some of the trickiest parts of a commercial lease. They define how you can and cannot use the property you're leasing. These clauses can be very specific or very broad, so read them very carefully and really think ahead to ensure that you are ok with the restrictions the landlord is putting in place. For instance, landlords might have use clauses that:

- Restrict the type of business you can conduct, which may preclude you from expanding your business into new areas.
- Restrict the manner and style of any signs or advertising on the premises.

An exclusive is the other side of a use clause, and they state that you alone can do something and other tenants cannot. These are often used to ensure that competitors can't move in next door. An exclusive clause of one tenant becomes a use clause for another tenant. Typically only well-established tenants will have the power to get exclusive clauses.

Improvement and Alterations Clauses

The ability to improve and alter the premises often takes up a lot of the lease contract and is a vitally important point. Issues about design, aesthetics, and what is "appropriate" can be complex, so expect to negotiate a lot over this issue. In addition to deciding what is allowed and what is not, also consider who should pay for any changes and how those changes impact rent.

Maintenance Clause

It may not be the most exciting of clauses, but maintenance clauses can be one of the biggest sources of strife between a tenant and a landlord. Aside from the initial issues of what bills will be paid and by whom, pay careful attention to who is responsible when problems arise, how any maintenance issues are to be resolved, and how they will impact rent. Landlords may also put in generic language about keeping the building "up to code" - make sure that the landlord defines exactly what codes he or she is referring to.

Insurance Clause

There are a host of business insurance options available, and your landlord may require you to carry basic forms of insurance such as property and liability insurance. In addition to the basic forms of insurance, consider negotiating for rental interruption insurance (in case something like a natural disaster disrupts your business) and leasehold insurance (to protect you if your lease is canceled for reasons beyond your control).

Security Deposit Clause

Unlike residential security deposits, where the landlord can only ask for so much as a deposit, commercial landlords can ask whatever they want. One way to negotiate a lower security deposit is to substitute all or a portion of the security deposit with a "letter of credit" from your bank, where the bank sets aside an agreed amount to be made available to the landlord if you default on your financial obligations.

Moving Allowance

Depending on the size, term, and cost of a new Tenant, a Landlord may choose to offer a Tenant a concession such as a moving allowance to further entice the Tenant to take the Landlord's space.

Operating Expenses and Taxes

Landlords typically treat operating expenses and real estate taxes either as an inclusion in the gross rental rate or as an additional cost to Tenant to be determined by the Tenant's proportionate share of the building they occupy. If Landlord charges Tenant for operating expenses and taxes

as an additional cost to Tenant, these costs may increase annually due to tax and other price increases for the Landlord to operate the building.

Other Significant Clauses

There are a host of other significant clauses to keep in mind when negotiating commercial leases.

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Ascot Realty Group
566 West Lake Street, Suite 100
Chicago, Illinois 60661
312-849-3100
www.ascotrealty.com