



COMMERCIAL LEASING 101

Understanding the fundamentals of commercial lease agreements is important because the signed contract can have a tremendous impact on the success or failure of a business. Commercial leases differ greatly from residential leases and are not subject to most consumer protection laws. There isn't a standard lease form, so it is essential to review the terms and conditions of each contract. If a lessee must alter the conditions of a signed agreement or break the contract, it can sometimes result in an arduous and costly process to resolve.

Commercial leases generally have some room for negotiation, regardless of the size of the proposed business. An inflexible property owner is most likely not someone to engage in a contract with. A landlord who comes across as unreasonable during the lease negotiations may be difficult to deal with once the space is rented. The potential lessee should contemplate the long-term relationship he or she is going to have with the property owner and the future likelihood of resolving issues.

Negotiations concerning terms and conditions of the agreement typically pertain to rent, the length of the lease, complimentary rent, security deposit, and upgrade the space to suit the needs of the lessee's business. However, there are many variables and certain considerations that come along with negotiating the terms and conditions of a commercial lease agreement. The property owner has to evaluate a number of circumstances when determining if the negotiations are conducive to the overall value of the property, the other tenants, the surrounding community, etc.

The two most common types of commercial contracts are Gross and Triple Net leases. A Gross lease is an agreement in which the property owner includes in the rental fee, expenses that are typically associated with ownership, such as utilities, repairs, insurance, and property taxes. A Triple Net Lease is an agreement in which the lessee is responsible for all taxes, insurance, and maintenance expenses pertaining to the use of the property in addition to the rent. The property owner establishes a suitable lease type based on the intended use of the space.

The following list includes items that a business owner may want to consider when negotiating a lease:

- The length (term) of the lease, effective date and renewal options
- Rent fee, monthly cost and allowable increases
- Rental inclusions; coverage related to insurance, property taxes, and maintenance costs (gross lease); or responsibility for aforementioned items (net lease)
- Security deposit; necessary requirements associated with reimbursement
- The space associated with the lease; square footage and common areas - hallways, rest rooms, and elevators
- Build outs for improvements and modifications
- Signage; specifications and placement
- Maintenance and repairs, including the heating and air conditioning systems
- Subletting allowances and restrictions
- Options to renew lease or expand the space
- Termination of the lease; notice requirements, penalties for early termination
- Dispute resolution; alternative methods such as mediation or arbitration

Perhaps the two most important things to remember are nearly all leases are negotiable in some way, and, commercial leasing can be complicated for those who have not negotiated a lease before. Most property owners expect to answer many questions and strive to make the process go as smoothly as possible. Researching all available market options and creating a comparable analysis are integral steps within the lessee's due diligence process. It is important to contemplate, strategize, and address all the needs of the business in an effort to find a space that accommodates the company's goals throughout the entire length of the commitment. A commercial real estate broker can help both sort through various options and negotiate a lease on your behalf.

Keep in mind that commercial leases are typically long-term and legally binding. There are many factors to consider when entering into any type of contractual agreement. Therefore, it is practical for an attorney to review the commercial lease agreement before making an obligation.

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