

Tenant Issues in Commercial Leases

When a person or a business finds the ideal commercial space, the next step is lease negotiation. The commercial lease is far different from the more familiar residential lease or rental agreement. Expert advice is usually critical, for the tenant to avoid signing off on an unfavorable lease.

Summary of Terms

Get the landlord to provide a written summary of the basic lease terms. This is sometimes done with a Letter of Intent, or it can be a simple memorandum. Either way, it should be a non-binding overview of primary elements, such as rent amount, starting date, length of lease, size of lease space, charges for utilities, charges for common areas, charges for taxes and insurance, and who covers maintenance. It should also clearly define the lease remises as to size, location, and address.

Negotiate Additional Terms

Once the basics are tentatively agreed on, consider whether to ask for additional terms, such as renewal options, non-competition (preventing your landlord from lease nearby space to a competitor), early termination options (allowing the tenant to pay a fee to terminate the lease early), assigned parking spaces, etc.

Beware of Personal Guarantee!

Most landlords will require that a lease to a small business be personally guaranteed by all the owners. However, it doesn't hurt to request that this be deleted. If the landlord insists on a "PG", carefully consider the "worst case scenario" and how much personal liability you can tolerate.

Tenant Improvements

Consider asking the landlord to pay for certain improvements to the premises, to be constructed before you move in. These could be installing walls and doors for offices, counters, closets, paint, carpet, electrical wiring, hi-speed cabling, and lighting. Most landlords will provide at least some of this, and others limit the tenant improvements to an allowance of a certain dollar amount per square foot in the leased space. In any event, pin down the landlord as to exactly what is "landlord's work". This is often spelled out in a Work Letter, to be attached to the written lease.

Obtain the Proposed Form of Lease

Ask that the landlord provide an advance copy of the proposed form of lease, so that you and your attorney can review it for additional provision that go beyond the basic negotiations. Watch for onerous provisions concerning late payment penalties, use of tenant's security deposit without advance notice, billings for common area charges without an accounting of tenant's fair share, etc.

Occupancy

The lease must specify a deadline for landlord to turn over occupancy of the premises to the tenant. Landlords sometimes fall behind schedule, and the consequences of landlord's delay must be spelled out. After a short grace period (i.e., ten days) landlord should reimburse tenant for each day of additional delay, in an amount reflecting tenant's actual damages (i.e., lost profits). If landlord's delay continues beyond 30 days, tenant should have the option of terminating the lease and any deposit should be refunded to tenant. Landlords often specify that by accepting occupancy, tenant accepts the condition of the premises and waives any claims against landlord for defects in the premises or incomplete tenant improvements. If landlord insists upon this, tenant should have the right to conduct a full inspection before accepting possession of the premises.

Security Deposit

A landlord will often require tenant to pay a deposit to be held by landlord as security for tenant's compliance with the lease. Landlord should be required to notify tenant in advance before landlord expends any portion of the deposit. The lease may allow landlord to use part or all of the deposit in payment of expense that should have been paid by tenant. Landlord should provide a detailed accounting to tenant of all amounts so expended. At the conclusion of the lease, there should be a deadline for landlord to refund the deposit to tenant.

Maintenance and Repairs

It is critical that the lease clearly specify which party is obligated for maintenance and repair of each aspect of the premises. Some leases require landlord to maintain only the roof, foundation, and exterior walls of the premises, and tenant is obligated to maintain everything else. The lease should spell out the procedure for either party to notify the other of necessary repairs, and specify a deadline for completion of those repairs. If the completion deadline is not met, the other party should have the prerogative of performing the repairs themselves, and obtaining reimbursement of all expenses from the other party.

Entry by Landlord

Most landlords will insist upon the right to enter the premises for inspections, repairs, and other purposes. The lease should require landlord to provide at least 24 hours advance notice (except in the event of an emergency) before entering the premises. Landlord should be responsible for any damages caused by landlord or its agents, while on the premises. Most important, landlord's entry on the premises should be conducted in a manner that minimizes the disruption of tenant's business operation.

Additional Resources

A prospective tenant is often represented by a broker who specializes in leasing. A competent broker is an invaluable source of additional information and advice. Of course, it is critical for the tenant to consult with a qualified attorney experienced in commercial lease negotiations, before any documents are signed.



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