

Leasing Commercial Space

When you get serious about an available business space, chances are you'll be presented with a typed or printed commercial lease prepared by the landlord or the landlord's lawyer. As you read the lease, keep these points in mind:

- **Rule 1:** Understand that the terms almost always favor the landlord.
- **Rule 2:** Know that with a little effort you can almost always negotiate significant improvements to the terms.

In theory, all terms of a lease are negotiable. But your negotiating power depends on whether your local rental market is hot or cold. If plenty of commercial space is available, you can probably win many landlord concessions. If your area's rental market is tight or you are chasing a unique space, you'll have considerably less leverage.

Length of the Lease

One area of the lease you should always focus on is its length -- also called its "term." A short-term lease is almost always to your benefit. Shorter leases give you more flexibility if the needs of your business change -- for example, you want more space or decide that a different location would be better. There is a trade-off here, of course. A long-term lease ensures that you'll have an affordable business space for a predictable period of time. And landlords are often willing to make more concessions on longer-term leases.

If your business isn't particularly location-sensitive (a mail-order business or software testing lab, for example) and plenty of commercial space is available in your area, then a short-term lease makes sense. Even if the landlord doesn't renew your lease, finding comparable space won't be a problem.

On the other hand, if you have found an especially favorable location for a retail shop, restaurant or other business where location is key, deciding on the best lease term is more problematic. If your business does well, you'll want the right to stay on for an extended period. On the other hand, you'll probably be nervous about signing a four-year lease in case your business goes kaput.

A good solution is to bargain for a short initial lease with one or more options to renew -- perhaps a one- or two-year lease with an option to renew for two or three more years. Typically, an option to renew gives you the right to exercise your option to stay by notifying your landlord in writing a certain number of days or months before the initial lease period expires.

If you ask for an option, expect the landlord to want a higher rent for the renewal period. If the property is particularly desirable, the owner may also want an extra fee in exchange for giving you the option of staying or leaving after your initial term is up. This is a common arrangement, and if the space is important to the success of your business, seriously consider paying it.

Rent and Rent Increases

Another primary issue to consider when leasing space is how much rent you'll pay. It's sensible to check out rates for comparable spaces. If the rent seems unjustifiably high, you could try asking for a reduction. Many landlords, however, usually won't consider lowering the rent (except in poor economic times or areas), but you may be able to get a few months of reduced rent to compensate for moving costs.

Landlords will usually include an annual increase to your rent in your lease terms. If the landlord insists on keeping the clause, try to get a cap on the amount of each year's increase, and try to exclude a rent increase for the first year.

When you're shopping around, look carefully at whether the landlord will pay utilities, repairs, taxes and insurance. With a "gross lease," your rent includes these costs. By contrast, with a "net lease" you pay for them separately -- potentially a large sum. In fact, the best approach may be to offer to pay a higher amount for rent in exchange for eliminating these extras.

Tenant Improvements

If you'll need lots of improvements to the space (called build outs), you may want to use the lion's share of your bargaining power to have the landlord provide them at no cost to you. If you're willing to sign a long-term lease, the landlord will be more willing to pay for improvements to the property.

Subleases and Assignments

Ask for an option to sublease or assign your space. That way, if you need to move out, you'll be able to have another company take your space and pay the rent, without having to break the lease. Or, if you rent enough space to grow into, you can sublease some of the space until you're ready to use it.

Renting commercial space is a big responsibility -- the success or failure of your business may ride on certain terms of the lease. Before you approach a landlord, you should understand how commercial leases differ from the more common residential variety. And before you sign anything, make sure you understand and

agree with the basic terms of the lease, such as the amount of rent, the length of the lease and the configuration of the physical space.

How Commercial Leases Differ From Residential Leases

It's crucial to understand from the get-go that, practically and legally speaking, commercial leases and residential leases are quite different. Here are the main distinctions between them:

- **Fewer consumer protection laws.** Commercial leases are not subject to most consumer protection laws that govern residential leases -- for example, there are no caps on security deposits or rules protecting a tenant's privacy.
- **No standard forms.** Many commercial leases are not based on a standard form or agreement; each commercial lease is customized to the landlord's needs. As a result, you need to carefully examine every commercial lease agreement offered to you.
- **Long-term and binding.** You cannot easily break or change a commercial lease. It is a legally binding contract, and a good deal of money is usually at stake.
- **Negotiability and flexibility.** Commercial leases are generally subject to much more negotiation between the business owners and the landlord, since businesses often need special features in their spaces, and landlords are often eager for tenants and willing to extend special offers.

Making Sure the Lease Will Fit Your Business

Before you sign a lease agreement, you should carefully investigate its terms to make sure the lease meets your business's needs.

First, consider the amount of rent -- make sure you can afford it -- and the length of the lease. You probably don't want to tie yourself to a five- or ten-year lease if you can help it; your business may grow faster than you expect or the location might not work out for you. A short-term lease with renewal options is usually safer.

Also think about the physical space. If your business requires modifications to the existing space -- for example, adding cubicles, raising a loading dock, or rewiring for better communications -- make sure that you (or the landlord) will be able to make the necessary changes.

Other, less conspicuous items spelled out in the lease may be just as crucial to your business's success. For instance, if you expect your shoe repair business to depend largely on walk-in customers, be sure that your lease gives you the right to put up a sign that's visible from the street. Or, if you are counting on being the

only sandwich shop inside a new commercial complex, make sure your lease prevents the landlord from leasing space to a competitor.

Checklist: Critical Lease Terms

The following checklist includes many items that are often addressed in commercial leases. Pay attention to terms regarding:

- the length of lease (also called the lease term), when it begins and whether there are renewal options
- rent, including allowable increases (also called escalations) and the method of computation
- whether the rent you pay includes insurance, property taxes and maintenance costs (called a gross lease) or whether you will be charged for these items separately (called a net lease)
- the security deposit and conditions for its return
- exactly what space you are renting (including common areas such as hallways, rest rooms and elevators) and how the landlord measures the space (some measurement practices include the thickness of the walls)
- whether there will be improvements, modifications (called build outs when new space is being finished to your specifications) or fixtures added to the space, who will pay for them and who will own them after the lease ends (generally, the landlord does)
- specifications for signs, including where you may put them
- who will maintain and repair the premises, including the heating and air conditioning systems
- whether the lease may be assigned or subleased to another party
- whether there's an option to renew the lease or expand the space
- if and how the lease may be terminated, including notice requirements, and whether there are penalties for early termination, and
- whether disputes must be mediated or arbitrated as an alternative to court.

The Americans with Disabilities Act. The Americans with Disabilities Act (ADA) requires all businesses that are open to the public or that employ more than 15 people to have premises that are accessible to disabled people. Make sure that you and your landlord are in agreement about who will pay for any needed modifications, such as adding a ramp or widening doorways to accommodate wheelchairs.