

Commercial Lease Agreement Considerations

Q: I am considering leasing commercial space. The landlord has given me his standard “form” lease. How do I know whether the terms are reasonable?

A: First of all, there is no such thing as a generic “form” lease. I will touch on a few of the more common provisions commercial tenants should consider negotiating in order to protect their interests.

Right to Cure (Correct) a Default.

“Failure to pay rent within 10 days after the due date is a default under the lease.” What happens if, due to vacation or a clerical mix-up in your office, the rent check is received late? If local rental rates are on the rise, the landlord may declare a default and attempt to terminate the lease in order to rent to a new tenant at higher rates. You should insist on written notice and at least a 10-day opportunity to cure any default before the landlord may exercise any remedies.

Alterations. “Tenant shall not make any alterations or improvements without Landlord’s prior written consent.” As with any issue where landlord’s consent must be obtained, you should require that consent not be unreasonably withheld or delayed. Also consider including categories that don’t require consent, such as cosmetic and non-structural alterations.

Repairs. If the landlord is responsible for roof repairs, you should make sure this includes the interior ceiling, if damaged by leakage. If you do not want to be responsible for replacing the HVAC system, resurfacing the parking lot, or repairing a ruptured sewer line, the lease should specify that these are the landlord’s obligations. In addition, if the landlord does not make required repairs within a certain amount of time, you should have the right to make the repairs and be reimbursed by the landlord.

Renewal. “This lease will automatically renew for successive one-year periods unless either party gives the other at least 60 days’ notice of termination.” This provision seems innocent enough, but you should consider negotiating an option to renew at your sole discretion. If the landlord gives you a 60-day notice to quit at the end of the initial term, you will be forced to either move or renegotiate at a higher rental rate if you want to stay. If the landlord insists on this provision, you should consider changing the timeframe to 120 days, since 60 days may not give you enough time to find another location and negotiate a new lease.

These are just some of the many issues to consider when reviewing the lease with your attorney. Other important issues include assignment and subletting, insurance, indemnification, access, surrender, condemnation, casualty and signage, among others. Negotiation will lead to a more balanced and reasonable lease. Good luck!



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