



Commercial Leasing: 6 important things to consider before signing a commercial lease

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If you are a new business owner who is taking the important step of leasing your first commercial space, you should be aware that commercial leases are subject to some unique considerations that would not necessarily apply to residential leases, such as an apartment lease. In many jurisdictions, commercial tenants are not guaranteed the same rights as residential tenants. In the commercial leasing environment, both tenant and landlord are persons or entities engaged in business pursuits; as such, a commercial lease is generally viewed as an equal bargaining transaction between the two business interests. For example, in New York, the respective rights and duties of the landlord and tenant are almost entirely defined by the terms of the lease itself, with very little statutory or regulatory protection for the parties. In plainer terms, the courts will not be sympathetic to issues arising out of your failure to thoroughly read and understand the terms of your lease. For this reason, it is crucial to only sign a lease when you are confident that you will be able to comply with all the terms during the entire duration of the lease.

While this list is by no means all-inclusive, here are 6 important clauses found in commercial leases that you should be aware of before you sign:

1. **Rent** - This is not as straightforward as a rent clause in a residential lease. Make sure you understand if operational costs such as electricity, trash removal, water, property taxes, etc. will be handled by you or by the landlord. Also, be aware of any yearly rent increases included in the lease.
2. **Improvements, alterations, and repairs** - This is a big one. In residential leases, the landlord is usually responsible for all repairs and maintenance of the property. However, commercial properties are commonly rented "as is." Unless specifically stated in the lease, the landlord does not have an obligation to maintain or repair your premises, or to maintain the common areas. It is paramount that you understand your obligations and have a financial plan for dealing with potential emergency maintenance that you may be held responsible for.
3. **Subleasing Rights** - Unforeseen circumstances can pop up for the best of us. If you no longer need the entire commercial space for yourself, will you be able to sublet all or a portion of it? The right to sublease is governed by your lease. Make a note of whether or not subleasing is permitted. If it is, most leases require you to inform your landlord at least a month in advance, usually in writing.
4. **Hours of Operation/Signage/etc.** - Make sure what is written in the lease will work with how you plan to run and advertise your business. Will you have 24/7 access to the space? Are there any noise restrictions? Typically, leases contain provisions that state you can't disturb or interfere with the business operations of other tenants.
5. **Breach of Contract** - What will happen if one party doesn't comply with the terms of the lease? Is

there a procedure or timeframe for written demands before litigation? What about mediation or arbitration? If it does come down to litigation, who is responsible for attorney's fees, etc.? Make sure that the terms are clear and fair before signing.

6. Option to Renew - Let's say that you signed a five-year lease and your business is booming at the end of this term. Would you really want to be forced to pack up and move to a new location, possibly disturbing business and confusing your clients? A good lease will always give the current tenant the priority to renew the lease after it expires.

Signing a commercial lease is a big step and one that you may have to live with for years or even a decade. It is a good idea to consult with an experienced real estate attorney before signing anything. Your attorney will have your best interests in mind and will often be able to work with the landlord or the landlord's attorney to come up with terms more favorable to you and your business.

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