



## Commercial Lease Help

# 10-Step Commercial Lease Guide

**T**his commercial lease agreement checklist cites basic issues you should address before signing a commercial lease agreement. Commercial lease agreements are complex, and we recommend employing a commercial lease attorney before execution.

### ☐ 1. WHAT IS BEING LEASED? – THE PREMISES

Commercial lease language should expressly state the demised premises by street address, specific square footage, and reference to an included site plan showing the demised premises. Review the floor plan for accuracy and extraneous equipment rooms, hallways, or other areas inflating the rentable areas, and thus the rent. The lease should expressly determine the rentable area by the landlord's architect under BOMA standards, permit the tenant's architect to confirm the square footage, and recalculate the premises and shared expenses after tenant's review. The lease should limit the premises by interior unpainted surface of the walls, floors, and ceilings. The lease should expressly include parking, specifying location and shuttle service, and limiting the landlord right to move parking. The common areas should make sense.

### ☐ 2. WHAT ARE YOU GETTING? – CONDITION OF THE PREMISES

Commercial lease language should specify the condition of the premises, whether it is "as-is," cold shell/grey shell, warm shell/vanilla shell, turn-key, or includes build-out obligations or tenant allowance. The lease should at least warrant condition of the premises to applicable zoning, disability access, and hazardous material laws. The lease should require the premises and building to be in good working order. If there is build-out, the lease should expressly state each party's workload in detail, including approval of finishes and punchlist delivery. The work

letter, whether tenant-controlled or landlord-controlled, should cover construction, timetables, delays, and all obligations and warranties in meticulous detail. If there is an allowance, the lease should expressly state calculation, additional allowance, amortization, repayment method, and result of unused remainder to rent credit or later alterations. The lease should state the building hours and the HVAC rules after hours. The lease should also state the signage rights, including building signage, monument, directory, floor lobby, and door signage.

### ☐ 3. HOW LONG ARE YOU GETTING IT? – LEASE DURATION AND EXTENSIONS

The lease duration should be express. The shorter the duration and more extensions available, the more control the tenant will have for business shortfall and under-pacing or outgrowth of the leased space. The renewal clause should be clear, stating the rate of increase, the notice requirements, the minimum and maximum rent rates after extension, further allowances and build-outs, and arbitration provisions if extended rent rate dispute occurs. The comparable market rate term should be clear, and the tenant should have an extension option exercise withdrawal procedure after arbitration.

### ☐ 4. WHAT ARE YOU PAYING? – THE RENT

The commercial lease must expressly state all tenant payment obligations, stating whether the lease is full service with a base year, a single net lease, a double net lease, a triple net lease, a bondable lease, or a hybrid lease. The commercial lease should specify all pass-throughs and CAM expenses, how and when the landlord estimates them and the tenant pays them, and whether the tenant pays directly or indirectly. Seek free rent at the front end. The escalation clause should be clear on the escalation trigger date, and should coincide with the reigning consumer price index. The tenant's proportionate share should match the rentable area and not change, allowing audit rights. The lease should clarify after-hours HVAC fees, limitations and caps on operating expenses, and exclusion of landlord's business



expenses. The tenant may require rate averaging to maximize advantages of present value, inflation, and later ability to pay higher rent. The landlord may request percentage rent, or additional rent after the break-point (in the event sales in excess of agreed amount). The tenant should remove all vague and unrestricted fees, including “occasional” expenses, “unanticipated” increase in expenses, salaries of landlord, property management staff, or contractor fees, expense of major renovations or repairs, or sharing of unexpected landlord tax bills. The lease should limit CAM fees dependent on the number of tenants and provide CAM caps, and the lease should set the CAM fees by the total rentable square feet, not the total rented square feet. The lease should expressly provide the tenant with copies of the actual tax bills along with an explanation for the increase. Before execution, the tenant should obtain report of the previous year’s CAMS to see how much they run, compare figures and ensure propriety, and spot sneak charges that shouldn’t be shared with tenants.

## ☐ 5. WHAT ARE YOU PUTTING DOWN? – THE SECURITY DEPOSIT

If there is a security deposit, confirm express provisions on the amount, the form, method of release, and date of release. If the lease requires a letter of credit, confirm who makes the bank arrangements for the tenant.

## ☐ 6. WHEN DO YOU START PAYING? – RENT COMMENCEMENT

The lease should provide sufficient rent-free time for the tenant to complete construction, fixturing, and stocking. The lease should provide a landlord penalty for late delivery of the premises as promised. In a landlord-controlled build-out, the commencement date should trigger after substantial completion of the landlord’s work. In a tenant-controlled build-out, the commencement date should be set to a realistic time frame.

## ☐ 7. WHAT ARE YOU GETTING INTO? – TENANT RIGHTS AND OBLIGATIONS

Use: the commercial lease should state the permitted use as either any legal use or a broad use. Confirm the use is legal by zoning, Florida law, and the building's covenants.

Landlord obligations: the commercial lease should expressly discuss electric, gas, water and water temperature, HVAC on and off business hours and temperature, elevators, security, lobby attendant, keys, lighting, janitorial, windows, and utilities interruption provisions. The lease should expressly discuss the landlord removal notice at surrender, the provision of casualty insurance and amount, construction administration fees, notice prior to entry, non-disturbance agreements, exclusivity rights in the building, relocation obligations, the provision of security, and compliance with building codes and duty to repair and bring within compliance. Landlord should generally be responsible for exterior repair, including the roof and structure. The landlord should warrant on nuisance, noxious fumes, smells, noise, disturbances from other tenants, and the expenses for moving upon breach.

Tenant obligations: the commercial lease should expressly discuss tenant maintenance and repair duties, right to make non-structural alterations, repair and maintenance obligations, and indemnity of the landlord. In general, the tenant will be responsible for interior, nonstructural repair and maintenance. The tenant should avoid personal guarantees and execute the lease as a business entity to deflect personal liability. The tenant should clarify damage versus normal wear and tear, with examples, and the effect of damage on the security deposit. The tenant should strike any legal rights forfeiture clauses, and the tenant must have its insurance provider review the lease's tenant insurance provisions.

## ☐ 8. CAN YOU GET OUT OF IT? – ASSIGNMENT AND SUBLEASING

The commercial lease should expressly state assignment and subleasing rights, and tenant's liability for lease obligations afterwards. The lease should allow

assignments and subleases to affiliate and successor entities without landlord's consent. Excess rent split should be clear, including expense deductions prior to split. If the lease requires landlord consent, the lease should state landlord consent fees, conditions of approval, and time limit to respond, and the tenant avoid landlord recapture provisions. If the lease allows recapture, it should allow tenant rescission of assignment/sublease request, and recoupment of investment in fixtures. The lease should also discuss early termination rights or options to reduce the premises, including how to trigger them and termination payment and timing.

## ☐ 9. WHAT IF IT GOES WRONG? – DEFAULT AND CURE

The commercial lease should expressly define "an event of default," including defaults and breaches by the tenant and by the landlord. The lease should provide a notice and cure period before a default becomes an "event of default," and distinguish between monetary and non-monetary defaults. The lease should provide a kick-out clause, discussing long base term mitigators, the right to cancel the lease based on sale revenue, and the right to cancel the lease. Upon default, the lease should expressly state the late fee charged, when the late fee accrues, the penalty interest rate and trigger, number of late payments before late fee incurs. The commercial lease should also provide for the landlord's duty to mitigate damages.

## ☐ 10. WHAT HAPPENS AT THE END? – SURRENDER OBLIGATIONS

The commercial lease should expressly state the surrender procedure, including responsibility for removal of tenant improvements and alterations. The lease should state ownership of improvements, the right to remove, the right to leave cabling in place, and the holdover rental rate.

