

IMPORTANT ITEMS TO CONSIDER WHEN NEGOTIATING A LEASE

Most business owners execute long term leases to secure a place of operation. Usually, the business owner is presented with a pre-printed form by the landlord and told to sign. And most business owners sign the document "as is." This does not mean that they did not review it, but it usually means that (a) they did not know what to look for when reviewing the lease or (b) they believed that they had no ability to change any of the terms.

If you absolutely need to locate in a particular space and there is a very high demand for the space, then you may not have much ability to negotiate the terms. At a minimum, however, you need to understand the terms of the lease so that you can operate accordingly and make a fully informed decision regarding the space.

The following are ten provisions of a lease to which you should pay particular attention:

Authorized Use. Somewhere in the lease the landlord will specify what type of business you may operate at the site. Make sure this description is not too restrictive. If you intend to expand your business or possibly enter into related fields, the description should include these areas as well.

Term of Occupancy. The term of the lease may be for three years, five years, ten years, etc. If you are a fairly new business, signing on for a long-term lease may leave you financially obligated even though your business did not succeed. You should make sure that you can sublet if this happens. If you are an established business, it is very expensive to move and a short term lease could end up being very expensive if you cannot successfully negotiate a new lease to stay. Probably the best situation is a lease for 3 or 5 years with an option to renew for another 3 or 5 years. This way if you want to stay the

landlord cannot kick you out and cannot force you to sign a lease that is no longer beneficial to you. If business is not going well, or if you find a better location, you simply do not exercise your option to renew. Beware, however, of the deadline to exercise the option. It is usually at least 3 to 6 months prior to the expiration of the lease term, so mark your calendar accordingly.

Rent. Most people simply look at the price per square foot when reviewing a lease or when comparing various spaces. "Rent" is much more complicated these days. You need to determine whether the rent quoted is "fully loaded" or "triple-net"

A fully loaded lease means that the price quoted is the total amount that you pay. A triple-net lease, on the other hand, requires the tenant to pay the base rent plus all expenses associated with the property, including insurance, common area maintenance and property taxes. Some leases require the tenant to pay a management fee as well.

Evening and Weekend Use. Some buildings are automatically set to turn the heat/air conditioning off on Friday afternoon and turn it on Monday morning. If you work evenings or weekends you want to make sure you can individually activate the heat/air conditioning.

— See the next issue of CHIPS for more lease provisions to look out for. Nancy A. Chillag is an attorney specializing in business, real estate and construction law. Her law office is located in Menlo Park, California.

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JUNE 99 7
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