

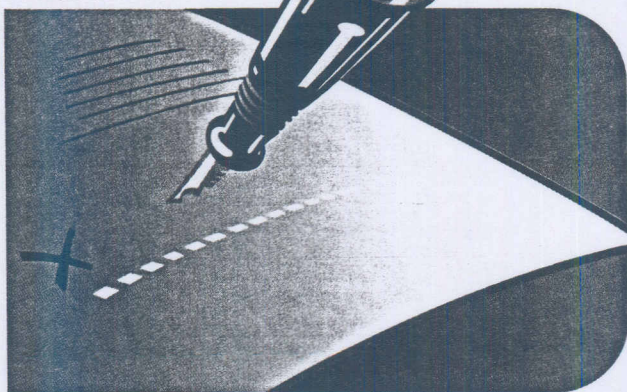
Negotiating a Lease

By Nancy A. Chillag

Most contractors execute long-term leases to secure a place of operation. Usually, the contractor is presented with a preprinted form by the landlord and told to sign. And most contractors 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 10 provisions of a lease to which you should pay particular attention:



1. 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. For example, if you remodel kitchens you may want the lease terms to allow you to add a showroom.

2. Term of Occupancy

The term of the lease may be for three years, five years, 10 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. 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 three or five years with an option to renew for another three or five years. This way if you want to stay the landlord cannot kick you out, nor can the landlord force you to continue in the space after the initial term if it 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 three to six months prior to the expiration of the lease term, so mark your calendar accordingly if you plan a change.

3. 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 the price quoted is the total amount 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.

If the lease requires that you pay charges in addition to the base rent, request information on the expenses incurred over the last two years. Determine what the average utility bills, management fees and taxes were and add these to the base rent to see whether the monthly rent is reasonable.

You also need to determine whether the owner of the building will be making major improvements and whether these improvements will be assessed to the tenants. Find out, in

KEY NOTES:

- Do not sign a lease unless you understand the terms
- Consider your company's short-term and long-term needs
- Spell out the terms most important to your company
- Assume nothing

advance, the estimated cost of improvements and the portion that will be allocated to your unit.

4. 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 be able to individually activate the heat/air conditioning.

5. Building signage

Is advertising important to your business? Do you want to have a large sign on the building for the public to see? If so, make sure it is authorized. If you are in a multi-tenant building, make sure no other tenant is allowed to have a sign larger than yours. Inevitably a competitor will rent space in the building and put a huge sign on top to make the public think it's his building.

6. Factors that inhibit business

When reviewing a lease ask yourself the following questions: Is the parking adequate and convenient for my customers and employees? Are other tenants using the building in such a way that detract from my use of the building? Are there any obnoxious noises or smells or other neighborhood nuisances that would make the working environment uncomfortable?

7. Tenant Improvements

If you are planning to do major work to your new space, determine whether the landlord will pay for any of the improvements. Also determine whether you will need to comply with the Americans With Disabilities Act (ADA), which could significantly increase your building cost. You may be faced with remodeling the bathrooms for the

entire building just because you wanted to make improvements to your unit. Negotiate with the landlord for payment of any ADA compliance requirements.

While you most likely would be able to do the improvements yourself, you should consider negotiating payment for the value of the improvements with the landlord so that you are compensated for your time and costs.

8. Maintenance

Most commercial leases require the tenant to perform their own maintenance of the facility. Beware of the lease that requires you to also maintain the structural elements of the building, i.e., roof, walls, foundation, which should be the landlord's responsibility. Also beware of a lease that makes you responsible for repairs to conditions regardless of when they occurred or who caused them.

9. Inspections

Do not assume that the building or the space you will occupy is in good condition. Inspect the building and negotiate repairs with the landlord. At a minimum, make a list of the defects so that the landlord does not hold you responsible at the end of the lease term.

10. Insurance

Most leases have extensive provisions on the insurance that the tenant is required to obtain. Send a copy of these requirements to your insurance agent and verify that you can obtain the insurance and that the policy limits and premiums are reasonable.

While there are many more provisions of a lease that need to be reviewed, the above are some of the major items and the ones that most commonly cause problems after the lease is signed. As with any legal document which will have a significant impact on your business, you should have your attorney review it prior to signing. A small investment up front can save you thousands of dollars in the long run. **QR**

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