

The Process of Negotiating and Signing a Commercial Lease

A landlord's proposed lease is just the starting point from which you can negotiate changes.

The lease that you and your landlord sign defines your legal relationship. Along with your insurance policy and your loan documents, your lease will be one of the most important legal documents in your filing cabinet.

What does the lease do? The lease is a contract in which:

- You agree to pay rent for a certain period of time.
- You agree to abide by other conditions (such as using the space for a consulting business only, or not displaying outside signs unless the landlord first approves them).
- Your landlord agrees to let your business occupy the space for a set amount of time.
- Your landlord may agree to physically alter the space to fit your business, or provide amenities such as on-site parking and weekly janitorial service.

The landlord usually starts the process. Typically, you'll be working with a lease form that's been written by the landlord or the landlord's lawyer -- and you can bet that neither one of them will be looking out for your best legal or business interests. In order to level the playing field, you need to learn a bit about the terms of a business lease, so that the landlord's proposed lease is just the starting point from which you'll negotiate changes.

There are no standard leases. Contrary to what a landlord may have you believe, there is no such thing as a "standard" commercial lease. Even if the landlord brings out a form that's widely used in your community or printed by a legal forms publisher, it can always be modified. The only constraints on your landlord's ability to negotiate come from pre-existing promises to other tenants in the building and obligations to lenders or insurers.

There's always room to negotiate. No matter how official-looking the document that comes out of the landlord's or broker's briefcase, keep in mind that it's negotiable. Just how negotiable depends on decidedly non-legal issues such as how tight the market is for your desired space, how badly the landlord wants to rent the space to you, and how badly you want it. Within the range of negotiability, however, your knowledge of lease clauses and the market will determine the success of the lease negotiation.

You'll need to decipher the meaning of lease clauses. Leases are full of legalese. Lawyers often dress up lease clauses in dense legal verbiage or burden

them with mile-long sentences. The chart below may help you match a clause title to its subject matter.

| Clause Name | What It's About |
|------------------------------|---|
| Parties or Lessor and Lessee | The names of the landlord and tenant |
| Premises | A description of the space you're renting |
| Rent | Explains how the rent is calculated |
| Term | When the lease begins and how long it will run |
| Deposit | The security deposit demanded by the landlord in case you damage the space |
| Hold Over | What happens if you don't move out as planned at the end of your lease |
| Use | Restrictions and requirements on how you use your rented space |
| Utilities | Explains how utilities are metered and how costs are apportioned |
| Taxes | Describes which taxes you will have to pay for, and how much |
| Insurance & Indemnity | Covers which insurance policies you must take out or pay for |
| Security | Covers the building security and who pays for it |
| Parking | Describes available parking and how it's paid for |
| Maintenance | Covers the common area maintenance (CAM) costs you have to pay for |
| Alterations & Repairs | Explains which alterations you may make and whether you need permission, plus delegates repair duties |
| Assignment & Subletting | Describes the conditions under which you can turn space over to another tenant |
| Options | Covers your rights to extend, expand, or contract the amount of space you rent or the lease term; may also cover your right to buy the property |
| Defaults & Remedies | Explains what happens if you or the landlord fails to live up to the lease |
| Destruction | Covers what will happen if all or part of the building is destroyed |
| Condemnation | Describes what happens to your lease if the building is condemned by a |

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| | government |
| Subordination, Nondisturbance, & Attornment | Financing clauses covering what happens if your landlord's lender forecloses on a loan that's secured by the building |
| Estoppel | Explains your duty to provide a signed statement that you and the landlord are complying with the lease terms |
| Attorney Fees | Your agreement as to who pays the winner's fees and costs if a disagreement ends in litigation |
| Guaranty | Your promise that you will provide someone who will guarantee your financial duties under the lease. (This guarantor must also sign the lease.) |
| Dispute Resolution | The mechanism for settling disputes, short of resorting to a lawsuit |

Want to Learn More?

To learn about the ins and outs of negotiating each of the above lease clauses, see *Negotiate the Best Lease for Your Business*, by attorneys Janet Portman and Fred S. Steingold.

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