



Beyond the Basics - Commercial Leases From a Tenant's Perspective

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Over the course of the coming months, we will be publishing a series of articles that discuss some of the common real estate, finance, and corporate issues that our clients face on a day-to-day basis.

At some point in its journey, a business is likely to face the challenge of negotiating and securing a commercial lease. While commercial landlords, real estate lawyers, brokers, and agents—at least one of which will be sitting across the table from a prospective tenant—are well versed in the ways of commercial lease negotiation, a tenant may only go through this process a few times over the course of many years.

It is critical, therefore, that commercial tenants go into the process well-informed and ready to negotiate strategically. While parties often focus on the basic items in the lease—term, base rent, expenses, and maintenance—many tenants accept boilerplate language as to the remaining terms and, thus, fail to adequately protect their interests.

In particular, some of the terms that are most often overlooked by tenants during negotiations, but should be reviewed and negotiated, include:

- A landlord's right to relocate tenants. While landlords often pay for such relocation, the impact to a tenant's day-to-day business is beyond measure.
- A landlord's right to obtain estoppel letters. Landlords often require tenants to execute estoppel letters confirming various items including that the landlord is not currently in default of the lease. These letters can be used against tenants in future proceedings.
- A landlord's right to approve signage and buildout. Often, a tenant will execute a lease before the parties have finalized plans for improvements to the space. Without adequate protection, a tenant may be in a position where it is limited in the buildout or signage it is allowed to utilize.

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- Exclusive use agreements in shopping centers. There is little that can harm a business more than competition right next door. Without an exclusive use agreement, a tenant may have little protection from an identical business opening up in an adjacent space.
- Adequate parking. In certain locations, parking is not only at a premium, but is often the biggest hurdle to a tenant receiving a certificate of occupancy.
- Status of the leased premises. Often landlords will want to confirm that the leased premises is in good condition at the time of commencement. Without adequate protections and inspections, tenants could be liable for unknown pre-existing conditions.
- Common area maintenance. Curb appeal is often in the eye of the beholder. It is, therefore, important to understand the manner in which any common areas are being maintained and the costs for it.

Every lease negotiation and agreement is unique. As a commercial tenant, you need to be aggressive and vigilant to ensure that the commercial lease deal you strike is appropriate, fair, and furthers your business objectives. A good first step is gaining a clear understanding of what terms—beyond merely the basics—you should be on the lookout for.

We will continue to discuss these topics in subsequent articles in this series. In the interim, if you have any questions about commercial lease issues, either as a landlord or a tenant, please contact Robert Hamor at rhamor@fosterswift.com. Having an experienced real estate lawyer represent you in complex lease negotiations is the best way to ensure that your rights and interests will be protected.