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5 THINGS YOU MUST KNOW BEFORE YOU SIGN A COMMERCIAL LEASE PART I

At some point, every business owner will be faced with having to sign a commercial lease. Before doing so, there are (at least) 5 things you must know.

1. Your rent payments may be higher than you think

Unlike rent payable on a residential property lease (such as a house or apartment), commercial rent payments are not limited to the base monthly rent. 'Base Rent' is the minimum or base amount of rent set out in the lease agreement, excluding any other additional rents or costs. It is customarily tied to a per square foot calculation that is the negotiated rent that you are required to pay.

For example, if you rent a 3,000 square foot store and the price per square foot is \$15, your base rent is \$45,000 ($3,000 \times 15 = 45,000$). This is the amount you will have to pay each year to rent the store. This amount is further divided to calculate your monthly rent payments. In this example, \$45,000 payable over 12 monthly payment equals \$3,750 per month ($45,000/12 = 3,750$). Therefore, the monthly base rent for this lease is \$3,750. That amount may not, however, be the total monthly rent due.

Many commercial leases include 'Additional Rent.' This item includes 'Common Area Maintenance' (CAM) charges, items that the landlord passes through to the tenant to cover the operating expenses of the property. Examples of such charges might include maintenance of common areas, lighting, plumbing, parking lot maintenance, roof repairs, etc. These fees can add up to be greater than the Base Rent. They are typically passed through to the tenant on a pro rata basis based upon the square footage leased by the tenant.

To calculate your pro rata basis, divide the fraction of the square footage of your rented space by the total square footage of the property. In our example, your store is 3,000 square feet. Let's say it is located in a shopping center totaling 100,000 square feet of retail space. In this example, your pro rata share will be 3% ($100,000/3$).



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Therefore, if the landlord projects that the Year 1 (that is often what the first year of your lease will be called) charges will be \$100,000.

Because your pro rata share for the property is 3%, your share of the CAM payments is \$3,000 for Year 1 ($\$100,000 \times 3\% = \$3,000$). \$3,000 divided monthly is \$250/month ($3000/12 = 250$).

Therefore, when paying your monthly rent, you will have to add \$250 in CAM to your \$3,750 in base rent. Your monthly rent payment (for Year 1) is now \$4,000 per month.

CAM is not the only addition to base rent. Some commercial leases may contain additional rent payments that are added to the base rent. You should make certain that you understand all of the rent that will be payable for the leased premises before signing a commercial lease.

If you are thinking of entering into a commercial lease, you should certainly have an attorney assist you with the transaction. Should you find yourself in this position, [contact Greenbaum Law Firm, P.A.](#) to schedule a consultation today.

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PART II**

At some point, every business owner will be faced with having to sign a commercial lease. Before doing so, there are (at least) 5 things you must know.

2. You can't change your business concept during the lease term

Many businesses change the direction, or pivot, their business concept. For example, Starbucks initially sold espresso machines in coffee beans, only later pivoting toward selling freshly brewed coffee (see how that worked out for the them).

A commercial tenant may ordinarily only use a leased premises for the specific purpose that the Landlord has approved in the lease. The section of the lease dealing with this issue is often referred to as 'Permitted Use' and once agreed upon, may not be changed without landlord consent, which may or may not be granted by the landlord.

For example, if the permitted use of the tenant is to warehouse and distribute electronic equipment, the tenant may not thereafter begin to manufacture clothing without the written consent of the landlord. As the landlord has no obligation to consent to the new business concept, the tenant may be prevented from using the premises for that new business.

3. You may not get your security deposit back

A security deposit is that amount of money that a tenant pays to a landlord to guarantee that the tenant will satisfy all of its obligations under the lease agreement. Customarily, the security deposit will be equal to 1-2 months' worth of base rent (in our example, \$3,000-\$6,000, based upon a \$3,000 monthly base rent).

The tenant pays the security deposit at the beginning of the lease term and the landlord holds it for the entire lease term to ensure that the tenant does not default on the terms of the lease or otherwise damage the property.

Upon lease end, the landlord will inspect the property to ensure that there is no damage (ordinary "wear and tear" is commonly excluded). Sometimes, if the



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tenant is in default of the lease, for example, having failed to pay the monthly rent on time, the landlord may be permitted to deduct the missed rent from the security deposit. At the end of the lease term, the tenant will receive the remaining deposit back less any withdrawals for repairs or missed rent. It is important to note that when a lease is ending, it is the landlord who makes the sole determination as to necessary repairs and damages. Often, this may not work in the tenant's favor.

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PART III**

At some point, every business owner will be faced with having to sign a commercial lease. Before doing so, there are (at least) 5 things you must know.

4. Even if the tenant is a corporation/LLC, its owner(s) may be personally liable

Many business owners use a corporation or limited liability company (LLC) to serve as the tenant under a commercial lease. By doing so, the entity, and not the individual owner (or shareholder or member, as the case may be) is responsible for the obligations under the lease.

However, just because the corporation or LLC is the tenant of record does not mean that the owner/shareholder/member will be completely off the hook.

Many commercial landlords require a personal guaranty when entering into a commercial lease.

A personal guarantee is a promise made by an owner, shareholder or member (or more than one) to personally pay the rent or for any damage to the property in the event that the corporation/LLC tenant is unable to do so.

Even though the entity is the official tenant of record, should the tenant fail to meet its obligations under the lease, the landlord will seek payment from the individual guarantor or guarantors, as the case may be.

It is possible for a personal guaranty to be limited or altogether removed, however, this must be done when negotiating the lease terms prior to lease execution.

5. You may not be able to get out of the lease before the termination date

Despite the best of intentions, businesses often cannot remain at a leased premises for the duration of the lease term. Sometimes, this is for a good reason, such as the business growing too large for the space. Should this



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happen, depending upon the reasonableness of the landlord, there are ways to terminate the lease early or exchange the premises for another property.

Most of the time, however, a tenant will wish to terminate a lease because business has suffered and the business can no longer sustain paying the rent for the space.

When this happens, tenants often look to sublease or assign the leased premises to a third party. A sublease occurs when the tenant's rights to the property (or a portion thereof) under the lease agreement is transferred to another a third party for part of the residual lease term.

For example, if there are 12 months remaining, the tenant may attempt to sublease the premises for 6 months. During the sublease, the original tenant remains liable for the obligations under the lease agreement.

The tenant may also assign its rights under the lease. This happens when there is a total transfer of the tenant's rights under the lease agreement to a third party. With lease assignments, the tenant is usually no longer liable for the obligations under the lease agreement.

The tenant's rights to either sublease or assign the lease agreement are provisions that must be negotiated into the lease. Often, they are not allowed without the landlord's prior written approval, which may be withheld by landlord it its sole discretion.

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