

Negotiating the Best Deal Commercial Lease Checklist

By Jacqueline M. Lage

Can you review this lease for me? Even though you may not be a transactional attorney who works in the areas of real property or corporate matters, you may find yourself in a situation where someone will ask you this question or maybe you will need to negotiate a lease for yourself someday. This article sets out a checklist that should be considered when negotiating a commercial lease.

Client goals

Before negotiating a commercial lease, you should first determine what your client's ultimate goals are for the lease. A few important variables to consider are:

- The size of the space in relation to the client's business needs, e.g., availability of additional storage or a common-area space;
- The term of the lease and any renewal rights;
- The current leasing market;
- The importance of a specific space or location to the client's business;
- The amount the client is able to pay per month, including taxes, insurance, and operating expenses; and
- Restrictions on use, signage, assignment, and subleasing.

In a tenant-favorable market, like the one that we have currently in the United States, you generally can motivate a landlord to grant certain concessions, such as rental concessions (free rent periods or reduced rent periods), improvements (the landlord picks up the tab for any renovations or repairs), renewal rights (the client being able to add additional lease years to the overall lease term), expansion rights (the client being able to grow into adjoining spaces), and fewer tenant's obligations.

Types of leases

An understanding of basic types of leases is fundamental to effectively negotiating a commercial lease. Some of those leases include:

- **Gross lease.** The tenant pays a set amount of rent. The landlord is responsible for paying taxes, insurance, and operating expenses.
- **Industrial modified gross lease.** The landlord generally pays for property taxes and insurance for a certain year, which is called a base year. The tenant pays its proportionate share of common-area maintenance expenses, utilities, and any taxes and insurance over the base year amount.
- **Triple net lease.** The tenant pays rent plus its proportionate share of operating expenses (called "CAM" or common-area maintenance), insurance, and taxes.
- **Retail leases.** The tenant pays a set rental rate, a proportionate share of common-area expenses, and may be required to pay a percentage of its gross sales as additional rent and a percentage of property taxes.

Key components of leases

It is important to keep in mind that leases come in all shapes and sizes and may be negotiated in many ways to achieve a client's goals. Some of the major areas of concern when negotiating a lease are:

- **Rent.** You should ensure that a tenant can afford the lease payments, especially rent escalations during the term of the lease; confirm that your client understands the total monthly obligation and what is included in that amount. You also should examine triple net leases for operating costs that are necessary to maintain your client's space and the larger premises. In negotiating leases with a landlord, sometimes a landlord may be amenable to putting a cap on the "controllable" operating expenses. Other times, a landlord may agree to set the base year as the year in which the lease commences, and the tenant may pay any escalations over that first year.
- **Terms.** You always should be cognizant of what a client's goals are in terms of lease duration. For example, with a startup business, you may want a shorter lease with renewal options if the location does not remain ideal for the tenant, the business does not run as planned, or the rent becomes unaffordable.

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- **Use and exclusivity.** You may want to explore an exclusivity option in a lease to prevent your client from experiencing direct competition in a building or complex. Also, you should ensure that the client's intended use and any operational aspects of its business are permitted.
- **Assignment.** You should determine whether your client plans to assign or transfer the lease to another entity, related or otherwise, during the term of the lease; whether such assignments are allowed; what expenses are associated with any assignment; and whether your client is released from liability under the lease if the client assigns.
- **Repairs.** You should clarify which party will be responsible for what repairs and try to shift the burden of structural or large mechanical repairs to the landlord.

Specific commercial leases may have many more items to consider than those listed here. However, when you tackle any lease review, the most important considerations to keep in mind are: (1) the client's needs; (2) any negative provisions in the lease that cannot be negotiated away; (3) which factors in the lease, if any, may inhibit the growth of your client's business; and (4) which points constitute deal breakers and which points will not impact the tenant enough to kill the deal. Finally, know your style of negotiating, and use your unique qualities to your advantage. After all, you will not receive what you want unless you ask for it.

NEXT STEPS

[The Lawyer's Guide to Negotiation, Second Edition](#). 2009. PC # 5150437. General Practice, Solo and Small Firm Division.

[Contract Drafting: Powerful Prose in Transactional Practice](#). 2010. PC # 1620424B. ABA Publishing.

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