Lowndes

A Primer On Leasing Space For Your Business

Lowndes Leasing Lawyers Blog
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You've been in business for a few years and it's time to sign a new lease, or you've decided to move your business out of your house to a space at the local shopping center or office park. You've checked out the space and decided it's right for you. You know the rent and deposit you can pay and how long you want the space. The leasing agent has given you the owner's standard lease form, which has a lot of fine print. What should you be concerned about?

Make sure the lease adequately describes the space, either by space number or street address, with a sketch attached. It should state the square footage, since rent will probably be based on size, and the lease may require you to pay common area maintenance (CAM) charges for upkeep of the common areas of the center, based on the ratio that your space bears to all space in the center. You should probably double-check the measurement, since you'll have to live with it for the term of the lease. Many landlords estimate the size based on building plans that may not reflect changes during construction, or use gross square footage which may not reflect interior finish work that could reduce your useable area.

Figure out what your obligations for CAM charges are. It's typical for landlords to require you to pay your pro-rata share of upkeep of the parking lot, sidewalks, landscaping, site improvements and common areas inside the building, if any, plus real estate taxes and liability and casualty insurance, but beyond that you may be able to negotiate. You want to avoid paying anything that should be a landlord's cost of doing business, such as overhead or administration. Make sure the types and amounts of the charges, and the way they are calculated, are legitimate. Is there a set CAM charge, or is it based on a budget? Ask for a copy of the last budget. Do the charges go up every year by a stated amount, or will they be tied to an index like the consumer price index (CPI)? If there are automatic increases not tied to the CPI, you may want to negotiate caps. Don't be afraid to quantify these charges as much as possible, since they will be your biggest expense other than rent.

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Who has what maintenance and repair obligations? If you're just leasing a space in a larger building, the landlord should probably be maintaining everything outside the interior walls of your space. Think about establishing standards for the landlord's obligations, in terms of both timing and quality of maintenance. Try to get warranties from the landlord regarding the condition of the building and the center.

What kind of approval rights does the landlord have over your use of the space? If the lease limits you to a particular use, perhaps you can get the landlord to give you an exclusive, so as to prevent a competing business from leasing in the same center. Carefully review any restrictions the landlord is imposing on your activities, and beware of a clause that says the landlord can impose "rules and regulations" on you in the future. Can you freely sublease or assign your lease? You may want to negotiate pre-approved conditions for these possibilities. Do you have the right to advertise on a pylon or monument sign for the center? If your door opens onto the exterior of the building, how large a sign can you put up outside or over your door? If you rely on passersby for customers, you'll need the exposure. If you rely on other customers of the center (or of an anchor tenant in the center), you might want to be able to terminate your lease if the anchor tenant leaves, or if a certain portion of the center goes vacant for a stipulated period. Negotiate for renewals of the lease in advance. Once you're established, it's tough on business to change your location.

The landlord should be willing to do a certain amount of interior finish work to adapt the space to your needs. Make sure you specify exactly what should be done, and how long it can take. Rent shouldn't start until you have approved the work, moved in and opened for business.

These are just a few of the issues facing prospective new tenants in today's commercial market. The best thing you can do to protect yourself is have an attorney review the lease and advise you of your rights and duties. It will be cheaper than hiring one later if you get into a dispute. Remember....read the fine print. It wouldn't be there unless the landlord wanted it there!