

Five Quick Bullets for a Tighter Lease

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Here are five quick tips for tightening a commercial real estate lease and avoiding potential pitfalls down the road.

1. The Parties

It is amazing how often the identity of the parties to a lease becomes a problem. The names of the landlord and tenant appear more often than not in the introductory paragraph to the lease; in the definition section of the lease; and on the signature block. Make sure the names are identical for each.

In addition, make sure that any corporate entity is properly identified. Pull a report from the company's state of incorporation to confirm its name and its active status.

An individual signing on behalf of a corporation or limited liability company, partnership, or other entities should make sure that the signature block is set up to identify the company or entity as the tenant with the signor's position with the company (e.g., president of the corporation or managing member of the LLC) properly reflected.

2. Rent Commencement Date

It is not uncommon for the lease commencement date to differ from the rent commencement date. Tenants often need to get into the space to complete their improvements in order to open the business, and landlords will allow that period to pass without the collection of rental.

The problem occurs when they are not the same date and the lease refers to a separate/subsequent agreement between the parties acknowledging what the rent commencement date is. This document is often forgotten, which can lead to problems determining how much rental is due if the tenant defaults.

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3. **Waiver of Subrogation Rights**

This provision is sometimes found in its own paragraph but more often than not found in lease paragraphs dealing with indemnification. Note that when a party is waiving its rights of subrogation, it is doing so for itself and also for its general liability carrier.

Always check with the insurance agent as most carriers require an endorsement to the policy for a waiver of subrogation in the lease.

4. **Notices**

These days, notices should be required to be sent by overnight carrier with proof of delivery or by hand delivery using a third party service/process server. Under Chapter 83 of the Florida Statutes, a three-day eviction notice must be hand delivered to the premises.

If the lease requires an additional means of notification, both should be used. Email notices may be allowed but only in addition to overnight delivery or hand delivery.

5. **Quiet Enjoyment vs. Right to Inspect**

Under the common law, a tenant has a right to quiet enjoyment of the premises free from interference or interruption by the landlord. This is a part of every lease. The landlord's right to inspection of the premises is therefore generally limited to emergency situations.

An additional right which would not interfere with the tenant's quiet enjoyment would be to establish a right to inspect at certain times during the year—perhaps on every six month anniversary of the lease. Periodic inspections can help eliminate future issues, such as problems with HVAC systems, leaking, damages to the walls, floors or ceilings, or other such situations which might appear small in the beginning but could cause larger problems over time if not attended to when discovered.