



BY ED TOBIN JR., ESQ.

Maynard, O'Connor, Smith & Catalinotto, LLP
6 Tower Place • Albany, NY 12203 • 518.465-3553 • tobin@moscllp.com

Commercial Leases

As a business owner you will typically require one of two types of rental space: retail or professional. Unlike leasing an apartment, a commercial lease is often of longer duration, five or ten years. For such level of commitment, an understanding of typical commercial terms and conditions and what needs to be negotiated before signing a lease contract can be very important, especially where commercial rent can be one of your top expenses.

Lease Considerations

Often, the level of negotiating leverage which a commercial tenant has is dependent on the amount of space to be leased. For example, if less than 1,000 square feet, it is unlikely that the tenant would be able to negotiate much as far as the terms.

The following list is an outline of considerations that a business owner must assess before entering into any lease:

- (1) Does the rent include utilities? If not, ask for the historical cost. Does it include janitorial services, trash removal, snow shoveling? What other expenses might be encountered? Does landlord supply heat and air conditioning and what hours?
- (2) Is there adequate electric for the tenant's needs? An electrical consultant may be necessary to make that determination.
- (3) Will you be negotiating with a built-in increase in rent? For example, if you are leasing in a shopping mall, the landlord typically expects you to pay your proportionate share (based on square footage) of any increased operating costs, property taxes and other common expenses.
- (4) Look for the sublet clause in the lease. A typical commercial lease will require a landlord's consent for you to sublet to someone else. The lease should contain language that the landlord will not unreasonably withhold such consent.
- (5) Will the landlord provide for any "fit up"? This is an allowance to assist you in getting the leased premises to accommodate your business purpose. With a one year

lease perhaps the landlord will agree to clean the carpets or paint the walls. In a larger commercial lease, the typical allowance is so many dollars per square foot. Not uncommon presently would be an allowance of \$2.00 per square foot. These will be expenses encountered by the landlord to get the commercial space ready for your business. In retail space, be sure your lease defines whether or not the landlord intends to remove other improvements already on the premises that are of no value to you. Sometimes the space will be rented "as is".

- (6) In the retail arena, there is often a percentage of rent to be paid based upon sales over the "break point". For example, this could be something along the lines of 6% of sales over the break point go to the landlord as rent. This is an amount that can be negotiated. Its advantage is that it allows for a lower base rent for a business getting started. It is something that you want to discuss with your accountant, the pros and cons, before entering into any kind of lease agreement.
- (7) A "triple net" lease is where all costs are paid by the tenant: rent, common areas, maintenance, insurance, taxes, utilities and trash removal. Some shopping centers even charge what is called a promotional fund, the advertising costs of promoting the shopping center, in general, paid for in common by the tenants.
- (8) Another consideration of the retail lease would be landlord allowances for signage. This must also be considered in light of any local ordinance requirement.
- (9) If you lease space in a shopping center, there may be additional requirements as far as hours of operation, that you must be open certain hours including evening hours for the benefit of shoppers in general. This can be a substantial factor as far as overhead costs in keeping the shop open.
- (10) Do you want your business to have exclusivity in the building or shopping mall where you will be located? For example, if you are going to open suntanning booths, does your lease prevent another tanning salon from opening in the same shopping center?

(11) If you are leasing professional space, will you need 24 hour access? How often are the cleaning services and what do they consist of?

(12) A small business owner should expect that the lease may require a personal guaranty. The language of the same needs to be carefully reviewed. Sometimes a landlord will agree to reduce the amount of the security deposit over time.

(13) What are the terms and conditions of the lease if a casualty occurs? What are the landlord's obligations to make the necessary repairs to the structure? What types of insurance do you need to protect against any casualties that you might cause? Does your insurance coverage have loss of business operations/business interruption coverage?

Professional Space

Professional space is often categorized Class "A", "B", "C". Class "A" space is brand new or very well maintained space in an excellent location with high class tenants. Class "B" would be in an older, but well maintained, building, perhaps not as good a location as well. As to costs, you might expect to pay \$19.00 to \$23.00 per square foot plus utilities plus parking for Class "A" space. Class "B" space may rent for \$15.00 to \$18.00 a square foot. Class "C" space may only be \$12.00 per square foot. In the suburbs, one may expect to pay perhaps \$17.00 to \$20.00 for Class "A" space. A factor that cannot be overlooked is parking which is very expensive in downtown areas and included in suburbs.

Brokers/Attorneys

Tenants often use brokers. The landlord pays the broker's fee of 5% to 6% of the gross rent. If you do not use a broker, you may be in a position to negotiate some money off the rent because of the savings to the landlord. One should not lose sight of the possibility that many of the above referenced lease terms and conditions are, indeed, negotiable. A business owner with little familiarity may be well served to hire an attorney to negotiate such terms as the long-term savings will greatly outweigh any attorneys' fees for the negotiation.

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