



BizGrow Toolkit

Commercial Leases: Best Practices for Small Businesses

Why is it Important to Have a Lease?

Written leases are an important part of your business. Renting a commercial space can be a significant commitment, but a physical location can be vital for the growth of many businesses. Unlike residential leases, commercial leases have fewer protections for the renter. That's why it's important to understand your business rights and negotiate favorable terms into a written lease.

The Basics

1. **Get it in writing:** Although it is possible for tenants and landlords to make informal, verbal agreements that may act as a lease, it's not recommended to have a verbal lease. Verbal agreements put you at a disadvantage. If there is any dispute between the parties, it can be difficult to prove the terms of an agreement. Without a written lease, the laws tend to favor landlords as the owner of the property, which will put you in an unfavorable position.
2. **Tailor your lease specific to your needs:** Make sure the provisions in the lease match your potential uses and business needs. For example, if you would occasionally like to have events in the space with food, make sure the lease does not prohibit caterers or food service.
3. **Ensure you can seek remedy if something goes wrong:** Be on the lookout for anything that limits you from suing or withholding payment if the landlord does something against the terms of the lease. For example, you should try to negotiate a provision that gives you the right to withhold rent if your landlord does not fulfill their duties (abatement).
4. **Make your lease is as detailed as possible, but make sure you understand everything:** Avoid vague or confusing language about the obligations of the landlord and tenant, rental costs, and what the landlord's duties are in terms of property maintenance. You will want to have these points as clear as possible.

Key Lease Provisions

Parties to the agreement: Include the names of the landlord (or lessor) and tenant (or lessee).

Description of the property: Include a detailed description of the property being leased and every part of it you will be using, including the physical location, square feet, and common areas. If separate display or storage areas are included, make sure that's clear.

Length of the lease and renewal options: Include how long the lease is for (six months, three years, etc.), and you will want to include a renewal option that sets a date on which you can elect to extend the lease for another term.



Base rent and other costs: Include the base rent that will be paid each month and any other costs, which may include: parking, common area maintenance fees, real estate taxes, landlord's insurance, expenses for maintenance of the building and grounds, utilities, and more. Make sure to ask about these potential costs to understand the full scope of your financial obligations.

Signatures: Include signatures of you, on behalf of your business, and your landlord.

Maintenance and repairs provision: This provision details who is responsible for paying for and making maintenance and repairs to the rented property and who is tasked with keeping it in good condition.

Early termination provision: This provision allows you to end your lease early, sometimes for a specified fee, and it is included in leases for various reasons. Early termination can require written notice to your landlord and result in a penalty for you. However, it may be beneficial to have an option to get out of a lease early, especially if your business is new.

Landlord's access provision: This provision details when your landlord is allowed to go onto the property you are renting and whether they must notify you before doing so.

Non-disturbance provision: This provision guarantees that your lease will continue under any circumstances, even if your landlord sells the property or a lender forecloses on the property. This helps to protect the tenant from eviction by a new owner.

Insurance provision: Make sure that insurance obligations for both sides are clearly defined in the lease. Most landlords will require tenants to procure some form of renter's insurance.

Tips for a Successful Lease

No personal guarantees: If possible, avoid personal guarantees. Make sure the lease is signed by you on behalf of your business, not by you personally. This will protect both your business and personal interests. However, for a new business a landlord will often require a personal guarantee. You should be aware that this makes you personally liable for continuing the lease in the event your business closes.

Include the right to sublet or assign: You should seek flexibility in who you are allowed to let use the space you are renting. It is best if your lease includes the right to sublet or assign the lease to another individual without the consent of your landlord. However, where your landlord's consent is required, make sure it cannot be unreasonably withheld. The right to submit or assign could be helpful for a new business, particularly if your lease has a personal guarantee.

No competition: You should include a provision in the lease to prevent your landlord from renting a nearby space to a competitor. This is especially important for restaurants and retail businesses.



Have a shorter lease with renewal options: It is generally better for tenants, especially with a new business, to have shorter lease terms with more extension rights that allow for flexibility.

Make the planned use broad: If your lease includes a provision stating a planned use, try to make that use as broad as possible to allow for flexibility. Be on the lookout for leases that state that you are allowed to use the property *only or substantially for the permitted use*. This will restrict your flexibility. Also, leases often require tenants to obtain their landlord's permission for a change of use, so make sure you are aware whether your lease requires this.

Tenant improvements: If you want to make changes to the property, make sure you include all the improvements in your lease. You will want to clarify if the landlord is assisting with or paying for these improvements, and what the improvements will cover. You can mark-up the floor plan and include relevant drawings or plans in the lease.

Your Rights

Once you sign a commercial lease and become a tenant, you have legal rights to enforce the lease.

As with all contracts, a lease is a binding legal document requiring both you and the landlord to fulfill their obligations.

If you are experiencing any legal issues with your landlord, please consult with an attorney or reach out to BizGrow for further assistance.

BizGrow at Lawyers for Civil Rights also offers free legal assistance, business support, and technical help to minority, immigrant, and women business owner, including classes and workshops.

Email us at BizGrow@lawyersforcivilrights.org today with any questions!



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Definitions

Lease: a contract allowing someone to use, occupy, and/or profit from property for a specified amount of time in exchange for regular payments to the owner of that property.

Landlord (lessor): a person who rents property to a tenant and typically owns that property.

Tenant (lessee): a person who rents property from a landlord.

Commercial versus residential lease: A commercial lease is a contract between a business owner and a landlord, where the business owner, acting as a tenant, rents a property from the landlord for the purpose of operating their business in exchange for rent paid to the landlord. A residential lease is a contract to use the rented property as a dwelling, not to operate a business there. Most residential leases last for just a year, while commercial leases typically last for multiple years.

Assignment: where the original tenant transfers the lease to a new tenant. The new tenant is bound by the terms of the original lease.

Sublease: where the original tenant transfers all or part of their rights to a new tenant. If the new tenant defaults on the rent, the landlord may seek payment for damages from both the new and original tenants.

Covenant: a promise by a tenant or landlord, either written into a lease or implied by law, to perform (or not perform) certain activity. For example, the **covenant of quiet enjoyment** is a promise implied in every lease—and often written into leases—that prohibits the landlord from interfering with your reasonable use and enjoyment of the property.

Remedy: If you are successful in a lawsuit, a remedy is what you are awarded by the court. This comes in the form of either money or an order by the court against the losing party to do (or not do) something.

Personal guaranty: a person, typically the business owner/tenant, agrees to personally pay rent and other costs owed to the landlord if the business is not able to make payments. This puts the business owner's personal assets on the line. If possible, avoid personal guarantees.