

I N S I D E T H E M I N D S

Understanding Landlord-Tenant Lease Agreements

*Leading Lawyers on Developing Lease
Agreements that Reflect Parties' Goals and
Maximize Negotiating Positions*



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The Components of a Commercial Lease

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Introduction

Negotiating a Commercial Lease

Prior to starting any landlord-tenant relationship, both landlord and tenant should evaluate their respective goals on the material terms and conditions of a commercial lease. This evaluation includes a full assessment of the willingness and flexibility of each to enter into a future contractual relationship with this specific business partner. The negotiation of these terms, before the actual execution of a commercial lease, is a key part of any tenancy.

Lease negotiation is conditioned on each party's relative negotiating strength/leverage (i.e., position) compared to that of its business partner, as well as its respective willingness to walk away from such a potential future business relationship. These principles frame lease negotiations regardless of whether the party is a landlord or a tenant and regardless of whether the parties are negotiating a new lease or a lease renewal. Numerous variables, when combined, drive each side's negotiating position. It is crucial that each party know its negotiating position from the start on each of the material terms and conditions of this business relationship and assess which terms are actual deal-breakers.

It is always a mistake for a party to enter a lease negotiation without knowledge of its specific negotiating framework—the terms it will and will not agree to—and without knowledge of its bottom-line position. A party that enters into any negotiation, especially a commercial lease negotiation, without knowing the most it will pay or lease may be influenced to accept a deal that is not in its long-term best interests. Each party should negotiate a commercial lease based on its own respective willingness to make the deal—not based on the other side's desires. A party that fails to establish its negotiating parameters with certainty, including its flexibility on certain material terms, before starting lease negotiation is far more likely to make a “bad” deal that it regrets six months or a couple of years into the tenancy. Also, if a party does not know its true bottom-line position, it will never know when to walk away from the negotiating table and look for a new business partner.

Regardless of whether the negotiation is with a true business partner or with a friend, neighbor, or your son's hockey coach, negotiation strategy

should remain unchanged, as a commercial lease is a business transaction involving thousands of dollars. Each side should negotiate to maximize the value of a commercial lease to itself, as these commercial contracts are long-term business relationships.

In the formation stages of a commercial lease, each side should honestly evaluate its business partner and the desirability of not only the leasehold premises and the material lease terms, but also its new or continuing business partner. As many landlords and tenants know from experience, a bad business partner who does not pay rent, damages the leasehold premises, fails to fix items when they break, or is a constant source of frustration is almost never worth the trouble. Even worse, a bad tenant can decrease the overall value of a commercial property based on its business reputation in the community. Neither side wants to allocate a disproportionate amount of professional time to any one business relationship. Such unexpected effort results in frustration, a loss of time, or financial strain—or all three.

Most landlords have a story about “that tenant.” The moral of the story is typically that they knew from the start of the lease negotiations that “something did not smell right.” When either party gets a feeling that regardless of their mutual willingness to enter into a commercial lease, “something doesn’t smell right,” the best route is always to walk away and seek another business partner, even if it means slightly less attractive terms. It is axiomatic that a bad business relationship is far worse than a business relationship that was never formed.

Based on its negotiating position, each side has the option to request disclosures by its business partner relating to its past business practices and its current and past finances. While many landlords and tenants may ultimately reject sharing this proprietary information, there is no prohibition against either side asking for corporate formation documents, financial records, such as bank statements or tax returns, and references. While a future business partner’s refusal to provide this information is not automatically a sign to walk away from a deal, fearing or refusing to provide this information without a legitimate explanation should be included in each side’s “smell test” in assessing the long-term merit of a prospective business partner.

In the context of a commercial landlord-tenant relationship, variables such as the strength of the real estate market on a national, state, county, and city

level, the type of leasehold premises, and its desirability at the time of the lease negotiation all contribute significantly to each side's contemporaneous negotiating position. In certain circumstances, warehouse space, retail space, and office space are viewed as more or less desirable space in a specific market. A surplus or a shortage of a specific type of commercial space in the market can also materially affect the strength of each party's negotiating position.

What the overall real estate market views as premium space today may not be viewed as premium space tomorrow, given the fluidity in the commercial real estate market. An inherently changing market can make determining a negotiating position challenging and makes it more likely that a party will overestimate or underestimate the same, regardless of whether the party is a landlord or a tenant, causing a party to enter into an unfavorable lease or walk away from a favorable deal. Knowledge of the overall real estate market allows each party to accurately evaluate similar tenants and comparable leasehold premises on their own respective merit. While real estate agents and brokers assist the parties in gaining market knowledge, the involved parties are always encouraged to do their own research and evaluation and not rely exclusively on an interested third party to establish their negotiating positions. A sophisticated landlord or tenant evaluates all of these factors before determining its negotiating position, and only then does it start the negotiation process with its business partner.

Negotiations of a commercial lease can focus on a specific issue that may control the entire commercial tenancy, such as price, but some negotiations turn on more specialized or specific issues, such as unique buildout concerns or allocations, amenities, rights of first refusal or options, or a personal guaranty. Each party's flexibility in negotiating all of the lease's terms determines whether a specific deal will come to fruition. A landlord that is desperate and in financial distress or a tenant that has fallen in love with a specific leasehold premises will typically alter its negotiating position to maximize the likelihood of the parties executing a lease by agreeing to lease terms that it previously rejected.

Once each side knows its negotiating position and has a negotiating framework and a bottom line, it is in a position to begin negotiating with its business partner. The remainder of this chapter will focus first on typical

and then more specialized commercial lease clauses that the parties, at their discretion, can request or include in a commercial lease.

Typical Commercial Lease Clauses

Although every commercial lease varies based on the involved parties' preferences and requirements, virtually all commercial leases should include, at a minimum, a clause that addresses each of the following issues:

Leasehold Premises

A commercial lease should define the specific leasehold premises to be leased from the landlord to the tenant. The leasehold premises should be defined by square footage and a street address. Some commercial leases include the legal description of the leasehold premises (in a self-standing building) or the legal description of the entire building in which the leasehold premises is located. Any additional premises to be rented by the landlord to the tenant, such as a storage area or parking spaces, should also be defined in the leasehold premises so that if an eviction is ultimately necessary, it is clear that items remaining in these additional premises can be removed by the court officer.

Lease Term

A commercial lease should include a specific start date, which is frequently referred to as a “commencement date.” The lease should also include a termination date. Neither of these dates needs to be specifically identified (e.g., June 1, 2016), as they can be generally defined by when a specific threshold event occurs, such as obtaining a certificate of occupancy or some other threshold during the buildout of the leasehold premises.

If a non-specific commencement date is utilized in a commercial lease, it is recommended to attach an exhibit to the lease that the parties will subsequently execute to definitively confirm the commencement date when it occurs to avoid any confusion and future disputes. Additionally, the commencement date may or may not relate to when payments are made of rent or additional rent—taxes, insurance, and/or common area maintenance expenses—as the parties may agree that even before the tenant occupies the leasehold premises, typically due to a landlord or tenant

funded buildout, the tenant will pay all or some rent and/or additional rent charges prior to the commencement date of the lease.

Charges Paid by Tenant to Landlord

Base Rent

A commercial lease should identify, on a monthly basis throughout the lease term, the amount of base rent to be paid by the tenant to the landlord. It is further recommended that this monthly base rent amount be annualized to identify the full amount of annual base rent so a potential default situation can be claimed by the landlord as a loss of annual, as opposed to monthly, base rent.

Additional Rent

Often in commercial leases, a landlord requires the tenant to repay it for charges incurred for insurance, taxes, and common area maintenance expenses. This is commonly referred to as a “triple net” commercial lease. In this context, the landlord must identify in the lease its insurance obligations, including its liability limits and specific coverages, to inform the tenant of the specific coverages for which it will be proportionately contributing. Similarly, disclosures relating to an estimated amount of taxes are required in the lease for the tenant to have actual knowledge as to its proportionate contribution to this aspect of the triple net lease.

Finally, the landlord must specifically define the common area maintenance expenses for which the tenant will pay its proportionate share during the lease term. Common area maintenance charges vary significantly among commercial leases but can include virtually all services provided to the leasehold premises or property so that the landlord fully recoups its out-of-pocket funds to maintain the common areas of the leasehold premises or property, as all such expenses are proportionately passed along to the tenants. Many landlords further include an additional charge (between 5 percent and 15 percent) of these common area maintenance charges as their management fee to cover not only their out-of-pocket expenses, but also the time that they or their management company spends to manage and maintain the property. Typically, the tenant’s proportionate share of the

insurance, taxes, and common area maintenance expenses is calculated as a fraction with the numerator as the square footage of the leasehold premises and the denominator as the square footage of the property.

Additional Charges—Late Fees and Interest

Most commercial leases include a late fee clause for base rent and additional rent payments not made by the tenant on or before their due dates in the commercial lease. Some late fees clauses include a standard numeric amount (e.g., \$50, \$100, \$150) or a percentage (typically 5 percent) of each payment. As a matter of general real estate law, a landlord should have the ability to establish that there is a business relationship between the amount of this late fee and the additional fees that the landlord will incur as a result of each late payment so that it is defensible, if ever challenged by a tenant, in court.

Similarly, landlords generally charge the tenant interest on payments not made by the tenant on or before their due dates in the commercial lease. In general, this interest charge is between 6 percent and 15 percent of each late payment. Again, in the context of real estate litigation, the landlord should be able to establish to the court that the amount of interest it is charging is neither usury nor a penalty and is reasonably related to the amount of damages the landlord will suffer due to each late payment.

Utilities

A utility clause should be included in every commercial lease. It should be clearly defined whether those utilities shall be metered separately to the leasehold premises or whether they are provided to the property as a whole. It should also be defined which utilities, if any, will be put in the tenant's name and when this event will occur—i.e., prior to the commencement date or potentially on the commencement date. If the landlord is paying the utilities, the landlord will likely include the same in the common area maintenance expenses and obtain reimbursement from the tenant or require a specific monthly payment from the tenant to cover utilities, usually based on prior utility bills. Tenants typically prefer separately metered utilities so they are not forced to pay for other tenants who use significantly more electricity on the weekend or routinely blast the air conditioning in the summer.

Condition of Premises

Alterations to Leasehold Premises

A commercial lease typically includes a clause that specifically states what alterations can be made by the tenant to the leasehold premises owned by the landlord. It is always suggested that the parties' lease negotiations clearly define any such known alterations to avoid future conflict. Most commercial leases allow tenant alterations with the landlord's consent, which shall not be unreasonably withheld. Any alterations that the landlord knows, in advance, it will not permit to the leasehold premises should be specifically identified in the commercial lease.

Buildout Provisions

Unless the leasehold premises is move-in ready, the parties will have some obligation—whether funded by landlord, tenant, or a combination—to construct the leasehold premises to match the tenant's business use and function. Such a buildout can be defined in a lease clause or in a separate lease exhibit. Buildouts can take a short amount of time, sometimes as little as a month, to an extended period of a year or longer, depending on the current state of the leasehold premises and the extent of the buildout before the tenant occupies the leasehold premises. At a minimum, any buildout should identify:

- The involved plans and specifications and their approval process;
- The landlord's and tenant's work and financial obligations;
- A process to select and approve the involved contractors, insurance, and indemnity considerations during the buildout;
- A defined timeline to perform the buildout; and
- Payment considerations

Typically, at various thresholds during the buildout, the landlord will obtain sworn statements from the contractors and inspection approvals from the municipality before releasing funds to pay the buildout allowance. The buildout process and allowance can vary significantly based on the parties' negotiating positions.

Care and Maintenance of the Leasehold Premises

During the lease term, the landlord's and tenant's obligations to maintain specific portions of the leasehold premises should be specifically defined in the commercial lease. While a landlord may maintain the four outer walls of a building, the roof, the parking lot, and the foundation, the tenant is typically required to maintain all internal aspects of the leasehold premises, whether it is an office space, a retail space, or a warehouse space. Defining these respective responsibilities with specificity in the commercial lease is essential to a successful business relationship.

Leasehold Premises Condition at End of Lease

A commercial lease should define the required condition that the leasehold premises must be in when returned to the landlord at the end of the commercial lease. If the tenant is required to return the leasehold premises to its original (white-box) condition, including repairing holes in the walls, etc., the commercial lease should specifically and unconditionally include the same. Moreover, one of the most frequently disputed issues between landlords and tenants at the end of a commercial lease relates to what property the tenant may lawfully remove from the leasehold premises—especially if the tenant feels it has paid for the same as part of a buildout.

While general real estate typically allows a tenant to remove personal property and trade fixtures from the leasehold premises when the lease expires—though not fixtures that have become a part of the realty during the tenancy—there is frequently a dispute between the parties, now that their business relationship is over, as to which items fall into each of the aforementioned categories. A commercial lease that clearly defines what items can and cannot be removed by the tenant at the end of a tenancy can help the parties avoid such a dispute.

Use Clause

Each commercial lease should define the tenant's specific commercial use of the premises. While such a clause is far more important in a retail context, where exclusive uses are typically preserved to ensure that tenants in the same retail environment are not directly competing against

each other, use clauses also bear a reasonable relationship to ensuring that the landlord's premises is not used for any purpose not pre-approved by the landlord.

Ultimately, a general description of "office use" is satisfactory for an office setting to ensure that retail activity is not being conducted by a tenant in an office building that may not have sufficient parking to support such a use. Similarly, there is even less parking in a typical warehouse environment, and if the premises is intended to be used as a retail store in any way, this use should be disclosed by the tenant to the landlord above board at the beginning of the tenancy to ensure that the parties mutually agree to the same. Ultimately, a use clause, while seemingly benign to the parties, may become crucial should the tenant try to alter its business operations during the lease term to "make an extra buck."

Lease Interruption Clauses

All commercial leases should foresee that events outside of the parties' control may occur during the term of a commercial lease that may interrupt a tenant's use and occupation of the leasehold premises. Such events include a casualty (fire, for example) occurring on the premises and a municipality taking a portion or all of the leasehold premises pursuant to its power of eminent domain or its right of condemnation.

In all three of these scenarios, and even in a scenario where an unlikely act, such as war or terrorism, affects the leasehold premises, provisions should be included in a commercial lease that specify the amount of the leasehold premises that needs to be taken or acquired due to one of these outside forces for the landlord and tenant to have respective rights to unilaterally terminate the lease, as well as the percentage of the leasehold premises that can be taken or acquired in any of the above scenarios and result in the lease continuing with a proportionate reduction in all charges (rent and additional rent) that are required to be paid by the tenant.

While such interrupting events are rare, having these provisions in a commercial lease before they occur is helpful in defining the manner in which the tenancy will continue without the parties having uncertainty and being required to resort to litigation to resolve a dispute.

Default Clause

Every commercial lease should include a clause that defines when the parties are in material default. While landlords view this as a one-sided clause, a tenant with a strong negotiating position will include a clause in the lease that identifies when the landlord is also in default—for example, not making its required repairs to the leasehold premises in a timely manner. A default clause should define all events of material default, both monetary and non-monetary, and will often include a requirement that the landlord provide some type of written notification to the tenants (or vice versa) outlining the material default. Many default clauses also include a cure provision allowing the defaulting party a specific timeframe to rectify the default before it forms a basis for either party to terminate the lease or otherwise take legal action to enforce its rights against the defaulting party.

Holdover Clause

Every commercial lease should include a clause that specifies what occurs if a tenant remains a tenant at the leasehold premises after the termination date. Some holdover clauses allow a tenant to remain a tenant at the leasehold premises at the same base rent as the last month of the lease, while others require a significant increase in base rent (100 percent, 150 percent, 200 percent, etc.) of the last month's base rent. This clause is important: the tenant has an incentive either to sign a new lease with the landlord before its expiration or to pay the increased holdover base rent rate to the landlord for its continued month-to-month tenancy.

Notice Clause

Every commercial lease should include a notice clause specifying 3 criteria:

1. The requirement that all notices are to be in writing
2. The specific addresses at which both parties are required to receive notices and, in certain commercial leases, whether additional parties, such as a franchisor, a guarantor, and/or an attorney are also required to receive all such notices
3. The manner in which each notice must be served—many commercial leases require notices to be provided via hand delivery, overnight

courier, or certified mail, return receipt requested. Commercial leases that require only regular mail transmission of notices do not ensure accountability and therefore are not recommended.

Security Deposit Clause

A landlord should obtain a security deposit from a tenant at the beginning of the tenancy. While a tenant with a strong negotiating position may negotiate out its security deposit, a security deposit is designed to ensure that the landlord has money in its possession at the end of the lease that can be used to repair damage to the leasehold premises and pay any outstanding base rent or additional rent. The security deposit is negotiable, but it should be at least one month's base rent. In the context where the tenant is a startup business without a significant payment history, the landlord may negotiate a larger security deposit, such as two or three months' base rent.

Attorney Fee/Costs Clause

Should the parties default on the lease, including a clause in the commercial lease that allows the prevailing party to recoup its reasonable attorney fees and costs is helpful to reimburse the prevailing party for all or part of its out-of-pocket costs (if enforced by the court) and to provide a disincentive to a party that knows it has defaulted under the lease to unnecessarily litigate a dispute in which it will likely lose and then be forced to pay not only its own attorney fees and costs, but also those of its adversary's attorney.

Rules and Regulations

As a material component of every commercial lease, the landlord should include a separate document, attached as an exhibit to the lease, that outlines the rules and regulations of the property. These uniformly applied rules and regulations can typically be changed at the landlord's unilateral discretion, with advance written notice to the tenant, during the lease's term so that the landlord retains the ability to change certain aspects of the tenancy without seeking the tenant's consent. Rules and regulations deal with parking requirements, visitor access, hours of operation requirements, and other background issues relating to the operation and maintenance of the property or leasehold premises.

Permits and Signage

Although far more common in a retail or even a warehouse setting, a commercial lease should identify all requirements for permits to be obtained from the municipality, including whether the tenancy or lease is conditioned on the procurement of the permits and which party—landlord or tenant—is required to pay for them. Permitting requirements pertain to the specific buildout of the space, as well as other issues, including signage, parking requirements, and use variances.

Allowed signage, which is pre-approved by the landlord and which may need to be approved by the municipality, whether located on an interior door, in the building lobby, on an exterior monument sign, on a billboard, or on the face of the property, should be clearly defined in a commercial lease.

Specialized Commercial Lease Clauses

Indemnification

An indemnification clause should be contemplated by both parties based on their negotiating positions at the inception of the lease. Whether a landlord or tenant provides partial or full indemnification to the other party for negligent or grossly negligent acts of itself or its agents, employees, or representatives, should be factored into each party's willingness to make a deal. Lack of an indemnification clause in a commercial lease, if it is either negotiated out or not considered by the parties, can leave a landlord or tenant responsible for paying legal fees and potentially a settlement or adverse verdict if it is named in a lawsuit precipitated by the actions or omissions of the other party in the tenancy.

Financial Statement Clause

Not only can the parties require financial statements in the negotiating process, but also the landlord can request interim financial statements to be provided by the tenant, typically no more than once a year. The landlord's basis to request this information is to ensure that its tenant remains financially viable during the lease term, regardless of whether the tenant is paying its obligations to the landlord.

Habitual Late Payment Clause

Such a clause is typically included in a commercial lease by a landlord to ensure that it is not repeatedly required to sue a tenant who is habitually late in paying. Some tenants prefer to pay on an “as-needed, as-required” basis, especially in a jurisdiction where the court is unlikely to award attorney fees to a landlord who is forced to file multiple lawsuits based on the nonpayment of base rent or additional rent. The best method to address this scenario proactively is to include a habitual late payment clause in the commercial lease that allows the landlord to terminate the tenant’s tenancy if it qualifies as a “habitual late payor.” This is a subjective term and can be defined at the landlord’s discretion—examples include more than one late payment in six months or more than two late payments in twelve months.

By including such a clause in a commercial lease, the landlord will have formally obtained, in the context of the parties’ initial contractual negotiation, the right to end tenancy with a tenant who is a “problem child” and is not worth the inconvenience and additional cost of suing it frequently to be paid.

Waiver of Jury Trial and Counterclaim Clause

Although such a clause varies in its enforcement in specific jurisdictions, a landlord can request that a tenant waive its rights to have a jury trial and to file a counterclaim against the landlord if the landlord sues the tenant for materially defaulting on the lease. Such clauses are enforceable in many jurisdictions and provide a significant advantage to a landlord to dissuade a tenant from engaging in costly litigation and simultaneously encourage a tenant to settle most disputes quickly.

Relocation Clause

Landlords can reserve the right to relocate the tenant to another leasehold premises of equal size and stature inside the same building or, in certain circumstances, to a different property of a similar size and stature owned by the landlord in the same city. The negotiation of this clause will be based on the parties’ respective negotiating positions. If a relocation clause is included in a commercial lease, a tenant should ask the landlord to pay not only the tenant’s moving costs and related expenses, but also some

additional monetary concession to compensate the tenant for its significant inconvenience, which will benefit the landlord (typically because it wants to utilize the leasehold premises in combination with an adjoining space to accommodate a larger tenant).

Security Interest Clause

In a commercial lease, a landlord can negotiate taking a security interest in the tenant's unsecured property/assets, including its accounts receivable, that can become immediately effective or effective only after a tenant's default. All such secured interests are governed by the Uniform Commercial Code. A landlord is required to file and perfect this security interest for it to become enforceable. If a tenant defaults and a landlord has a security interest, the landlord is a secured creditor as to the secured assets (as opposed to an unsecured creditor) and is in a significantly better position to collect on them.

Option or Right of First Refusal Clauses

In many commercial leases, the landlord and tenant have agreed that at the end of the initial lease term, the tenant will be automatically entitled to continue the tenancy during an option period(s). Similar to the lease, any option should specifically define the material terms of the option, including the commencement date, the termination date, and the amount of, at a minimum, base rent to be paid during the option period. Moreover, the option should be available only to a tenant that has not previously defaulted under the lease on a specified number of occasions during the initial lease term and is not in material default of the lease at the time the option is required to be exercised. Options should typically be required to be exercised by the tenant between ninety and 150 days before the termination date of the original lease term to ensure that the parties have significant advance notice of the tenant's intentions.

Similarly, a tenant that desires to expand the leasehold premises into an adjoining space but that does not currently need this additional square footage can negotiate with the landlord a right of first refusal relating to that adjacent or currently vacant space. Typically, the landlord will provide the tenant with a right to match the terms of any offer it intends to accept

relating to this adjoining space during the lease's term. In many instances, while the tenant's right of first refusal does not become effective unless a new tenant desires to acquire the adjoining space, the fact that a right of first refusal exists on this adjoining space can dissuade some potential tenants from spending the time and effort necessary to negotiate a lease for the space.

Personal Guaranty

A personal guaranty of a commercial lease can be executed either by the tenant's owners or by any third party that is willing to fulfill the tenant's obligations under the lease if the tenant materially defaults on it. A personal guaranty can be limited in many ways—for example, the amount of the personal guaranty can be limited to a specific amount of money, to specific charge(s) under the lease, or to a specific amount of time during the tenancy.

A personal guaranty provides significant additional security to the landlord in the context of commercial tenancies, especially with startup companies. What's more, a personal guaranty is also important if significant buildout costs are incurred by the landlord to suit the leasehold premises to the tenant's use or operation. The difference between the landlord ultimately collecting or not collecting a debt owed by a tenant is often determined by whether a personal guaranty exists.

Conclusion

This chapter on the components of a commercial lease was designed to be informative, but not exhaustive. Ultimately, the components included in a commercial lease are defined by the parties themselves and their respective willingness to become business partners based on their respective negotiating positions. Many of the typical and more specialized lease clauses frequently included in a commercial lease are contained in this chapter.

Each party's goal on material commercial lease terms should be known before the lease negotiation and drafting starts. If both sides are aware of their negotiating positions, a commercial lease will typically boil down to a few material clauses where disagreement exists. The parties' flexibility on these material terms in a commercial lease will determine whether a business relationship is consummated.

As the real estate market fluctuates, landlords' and tenants' negotiating positions change, but they are unlikely to be forgotten by your adversary. Knowing that "what goes around comes around" should be considered by both sides in a commercial lease context, as good landlords get referrals to new tenants from happy existing tenants and good tenants always get the benefit of the doubt from their landlords, both during the tenancy and when the time comes to discuss a lease renewal. In this regard, the value of engaging in good-faith commercial lease negotiations should never be underestimated.

Key Takeaways

- Advise clients that before starting any commercial landlord-tenant relationship, both landlord and tenant should evaluate their respective goals on the material terms and conditions of a commercial lease. This evaluation includes a full assessment of their willingness and flexibility to enter into a future contractual relationship with this specific business partner.
- Note that commercial lease negotiation is conditioned on each party's relative negotiating strength and leverage when compared to that of its business partner, as well as its respective willingness to walk away from such a potential future business relationship. Knowing from the start the respective negotiating positions on each of the material terms and conditions of this business relationship and assessing which terms are actual deal-breakers are crucial.
- Honestly evaluate your client's business partner and the desirability of the leasehold premises and the material lease terms. Based on your negotiating position, each side has the option to request disclosures by its business partner relating to its past business practices and/or its current and past finances.
- Keep in mind that variables such as the strength of the real estate market on a national, state, county, and city level, the type of leasehold premises, and the property's desirability at the time of the lease negotiation all contribute significantly to each side's contemporaneous negotiating position.
- Inform clients that virtually all commercial leases should include, at a minimum, a clause that addresses each of these issues:

- leasehold premises
 - lease term
 - charges paid by tenant to landlord
 - condition of premises
 - use clause
 - lease interruption clause
 - default clause
 - holdover clause
 - notice clause
 - security deposit clause
 - attorney fee costs clause
 - rules and regulations
 - permits
 - signage
- Advise clients that specialized commercial lease clauses include indemnification, a financial statement clause, a habitual late payment clause, a waiver of jury trial and counterclaim clause, a relocation clause, a security interest clause, an option or right of first refusal clause, and personal guaranty.

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