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What Should I Look For In My Commercial Lease?

Your business is thriving and you've decided to move out of your house into a real business space. You talk to a commercial real estate agent who shows you around several offices or retail spaces until you've finally found the space you think you want. How do you deal with the lease?

First of all, it is common to negotiate the terms of the lease. Your negotiating power is determined by your local commercial rental market (is there a lot of vacant space?) and how much space you are renting (you have more power when you are renting a lot of space). I would recommend that you hire a lawyer who has experience negotiating commercial leases to represent you since you know that the landlord is very likely to have a lawyer representing him.

Make sure that you understand the amount of rent you will be paying. Many leases have charges for "additional rent" which can be for real estate taxes, utilities, and operating expenses that the landlord has (insurance, garbage removal, snow removal, repairs). You should also note whether the rent or additional rent increases during the lease term. Some landlords of retail spaces also require "percentage rent" which is a percentage of your revenues.

You want to pay careful attention to the definition of the leased space. Many leases are stated in terms of square footage of leased space and you want to be sure that the highest proportion of the space that you are leasing is actually usable space. If the rented space includes hallways, restrooms, elevators, or maintenance areas, you are paying for a lot of space that is not really usable for your business.

How long is the lease term? If business is doing well, you may want a longer term or a right of renewal at a favorable renewable rent. If you are just starting up, you may want the shortest term the landlord will give you.

Is there a personal guarantee required? Many landlords will want you to personally guarantee the lease, even if your business is owned by a corporation or LLC. This gives the landlord two sources of rental payments. If at all possible, negotiate the personal guarantee out of the lease – the ability to shield your personal assets from company debts is why you formed your business entity in the first place.

What are the terms of assignment or subletting? Your business needs may change in a year or two, or the location does not work for you, and you may want to get out of your lease or rent out part of your space. If your lease has lenient terms for subletting or assigning, that gives you more flexibility in deciding what your leasing needs are in the future.

There are many more details to be negotiated in a typical commercial lease. This is not a do-it-yourself project. Know what you want before you start looking, learn what the market rents are in the locations that you are looking, and work with a good real estate agent and lawyer.

Contact me at Rgronsky@Gronskylaw.com or 201-251-8001 to find out how Gronsky Law can help your business in New Jersey with its legal problems. I return emails and phone calls promptly and answer all of your questions so you have peace of mind about your legal questions.