



# Commercial Leases

## Be wary of ‘boilerplate’ provisions that can bite.

Commercial leases are in many ways the most complicated of real estate transactions. When you buy a piece of property, the purchase agreement sets forth the terms of the purchase, and once the transaction has closed, most of those terms are no longer needed. On the other hand, when you enter into a lease, the lease agreement will include terms that will govern your relationship between the parties for the entire term of the lease, whether it’s five years, 10 years or longer. Much time and energy is spent negotiating the rent, the common area costs and other important economic terms. But there are other provisions, ones that are often overlooked as “boilerplate” provisions, which may have a significant impact on both parties. Let’s consider a few examples.

### Compliance with Laws

Most commercial leases include a provision requiring the tenant to comply with all laws and ordinances applicable to the use and occupancy of the leased premises. What happens if the applicable laws change during the lease term? For example, what if the fire safety system for the entire building needs to be upgraded? Is the tenant

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required to pay for the new sprinkler system, at least to the extent it is located within the premises? And if so, is the cost amortized over the useful life of the improvements, or is the tenant obligated to pay the entire cost up front? Standard lease language often fails to address these issues and can leave at least one of the parties wishing it had paid more attention to this provision before signing the lease.

### Force Majeure

Almost every commercial lease will include a “force majeure” provision that will extend the time for completing an obligation if a delay is caused by events beyond the control of the parties. Many of these provisions fail to address whether the governmental permitting process is included as an event “beyond the control” of the party responsible for completing improvements to the premises. If, for example, the tenant is planning to occupy the premises by a certain date, and the landlord is the party responsible for completing the initial tenant improvements, what happens if the required permits

are delayed simply because of a permitting backlog at the city? The force majeure provision should be specifically tailored to be consistent with the parties’ obligations and expectations with respect to commencement.

### Surrender

A provision that requires the tenant to return the premises at the end of the term in the same condition they were in on the commencement date may create some confusion, even if “reasonable wear and tear” is excepted. In most cases, the parties will also want to exclude any damage resulting from an insured casualty, to avoid any inconsistency with provisions governing repair and restoration. The parties should also consider whether the tenant will be required to remove any alterations made during the term, including any telecommunications cabling that the tenant may have installed. Removal of cabling can be an expensive proposition, and neither party will want to be surprised at the end of the term with an unexpected obligation for removal.

### Holding Over

Typical holdover provisions will extend the lease term past the expiration date on a month to month basis, as long as the continuing occupation is allowed by the landlord. This can allow the tenant to remain in possession while the parties are negotiating a lease extension or renewal. The holdover provision will usually provide for an increased rental rate during the holdover period. Setting holdover rent at 150 percent or more of the existing rent may give the landlord additional leverage as the parties negotiate a renewal, since the tenant will have great incentive to avoid the higher rent. The tenant will want to negotiate a more modest increase, minimizing the effect of the rent increase if negotiations run past the initial expiration date.

Commercial leases are complicated documents, and it’s easy to overlook provisions that may later become very important. Careful reading of the “boilerplate” provisions can help to minimize surprises for both parties during the lease term.

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