
A Dozen Leasing Tips Every In-House Counsel Should Master

1. Leases are living, breathing documents as long as you pay your rent. You cannot put them in a drawer and forget about them. Leases are also typically obligations of the tenant that will last for the entire lease term without direct exit options.
2. Understand the type of rent you pay (base rent, gross rent or base year) and the operating expense inclusions and exclusions.
3. Carefully review the reconciliation received from the landlord at the end of the base year because there are limits to what a landlord can pass through. Two traps to be careful of: (a) the landlord who does not charge the annual increases – if a new management company or owner comes in, you could be responsible for the catch up over a number of year, and (b) in California, because of Proposition 13, a dramatic increase in taxes if the building is sold.
4. Be mindful of more troublesome permitted and prohibited uses. Though most prohibited uses are typically fine for the average tenant, a few can cause trouble. For example, some leases block all alcohol consumption, which can be difficult if the tenant wants to host parties.
5. Look out for particularly expensive compliance with laws requirements. Potential traps for the tenant are requirements to make structural or capital changes to the building or requirements for fire safety – including sprinklers and the like – either can be expensive and benefit future tenants as well as the current tenant. Tenant's should not have to make a building comply with laws, unless that requirement arises from tenant's specific use of the building or alterations being completed at tenant's request.
6. When making alterations to premises, check when the landlord's consent is required and what the tenant needs to provide. Some leases require tenants to carry performance bonds at 150% of the cost of the work as those bonds, which can be very expensive. Landlord's approval can slow down timing as well. Also, consider whether the newly installed alterations will have to be removed at the end of the lease term.
7. Be aware that assignment clauses can come into effect if the tenant is doing corporate transactions under the "operation of law" provision not only if the premises is being sublet or assigned to third parties. If you are buying a company or your company is being sold – you may need your landlord's permission first.
8. Be aware that the landlord may have the right to take the premises back in the event that the tenant assigns or subleases part of the premises, and may also have the right to some or all of the tenant's profits.
9. Ask your risk manager/insurance provider to review your lease provisions before you sign the lease. Some landlord boilerplate is outdated. When you renew your insurance,

make sure it meets all of the lease requirements, as your leases will have very specific requirements.

10. Be aware of what utilities are separately metered and which are not and which are included in operating expenses and which are paid separately. Even if utilities are paid as a part of operating expenses be aware that if you install supplemental HVAC for the computer room or the like, that may not be included in the utilities paid for through operating expenses.
11. Be aware of any trade secrets you need to protect if the landlord is providing the janitorial services.
12. In providing estoppels and subordination, non-disturbance and attornment agreements (SNDAs), be careful of provisions that amend the lease from what it is now, and the landlord's right to fill out the form for the tenant if it is not done on time. Get an SNDA if you have a long lease term and site is critical.
13. Be wary of two major issues at the end of the term: First, when does the tenant have to move out? If the tenant stays beyond the term, it is called hold over tenancy. The tenant can be liable for consequential damages as well as increased rent. Second, what is the tenant's obligation to remove improvements from the premises? This may actually require an early move out. Often, cabling is required to be removed, but it may well be more improvements that the tenant made than that.