



## Key Considerations When Drafting or Signing a Commercial Lease in New York

Entering into a commercial lease is one of the most significant decisions you can make for your business or investment. Whether you are a landlord or a tenant, the terms of your lease will have long-term financial and legal implications. A well-drafted lease can help avoid costly disputes, while a poorly drafted one can lead to serious problems down the road.

At James G. Dibbini & Associates, P.C., we regularly assist clients in navigating the complexities of New York commercial leases. Below are some key items to consider before drafting or signing a commercial lease.

### 1. Lease Term and Renewal Options

The lease term sets the duration of the agreement, and understanding its implications is crucial:

- **Initial Term:** Clarify the length of the initial lease term and whether it aligns with your business or investment goals.
- **Renewal Options:** Negotiate renewal options and ensure they are clearly defined. Tenants should ensure the renewal process is straightforward, while landlords may want to set criteria for rent adjustments at renewal.

### 2. Rent and Additional Costs

Understanding the full scope of financial obligations under the lease is critical. In addition to base rent, consider:

- **Rent Escalations:** New York commercial leases often include escalations that increase rent over time. Ensure that the terms for these increases are transparent and manageable.
- **Operating Expenses:** Clarify whether the lease is gross, net, or triple net:
  - **Gross Lease:** The landlord covers operating expenses, and the tenant pays a fixed rent.
  - **Net Lease:** The tenant pays rent plus certain expenses like property taxes or insurance.
  - **Triple Net Lease (NNN):** The tenant is responsible for all operating expenses, including taxes, insurance, and maintenance. Ensure that you understand these obligations before agreeing to them.
- **Common Area Maintenance (CAM) Fees:** Be aware of shared maintenance costs and ensure they are clearly defined.

### 3. Use of the Premises

Ensure the lease clearly defines the permitted use of the property:

- **Zoning Compliance:** Confirm that the permitted use complies with local zoning regulations. Tenants should verify that the space is zoned for their intended business activities.
- **Exclusive Use Clauses:** Tenants may want to negotiate exclusive use provisions, which prevent the landlord from leasing space in the same building to a competitor.

## 4. Build-Outs and Improvements

If you require modifications to the space (often called build-outs), make sure these details are outlined in the lease:

- **Tenant Improvements:** Clearly define which party is responsible for the cost of modifications and improvements. Will the landlord provide a tenant improvement allowance (TIA), or is the tenant responsible for all build-out costs?
- **Approval Process:** Ensure that the lease specifies the approval process for modifications and the timeline for completing any necessary work.
- **Restoration:** Understand whether you will be required to restore the premises to its original condition at the end of the lease term, as this can add significant costs.

## 5. Subleasing and Assignment

Circumstances can change over the course of a lease, and you may need flexibility:

- **Subleasing:** Tenants should negotiate the ability to sublease part or all of the space if they need to downsize or relocate. Make sure the lease clearly outlines the process for obtaining the landlord's consent to sublease.
- **Assignment:** If you sell your business or need to transfer the lease to another entity, it's important to know whether assignment is permitted and under what conditions.

## 6. Maintenance and Repairs

Responsibility for maintenance and repairs can be a common source of dispute, so ensure these obligations are clearly defined:

- **Landlord's Responsibilities:** Typically, the landlord is responsible for maintaining the structural integrity of the building, including the roof, foundation, and exterior walls.
- **Tenant's Responsibilities:** Tenants are often responsible for maintaining the interior of the space and certain systems like HVAC, plumbing, and electrical. Make sure these responsibilities are clearly spelled out in the lease.
- **Repairs and Maintenance Costs:** Ensure the lease clarifies who bears the costs of routine maintenance versus major repairs.

## 7. Termination Clauses and Default Provisions

Both parties should understand their rights in the event of a breach of contract or early termination:

- **Default and Cure Periods:** Define what constitutes a default and how long the defaulting party has to "cure" the problem before legal action is taken.
- **Early Termination:** If a tenant needs to leave before the end of the lease term, it is essential to understand the potential penalties and costs associated with early termination. Landlords should also define what remedies are available if a tenant breaks the lease.

## 8. Personal Guarantees and Good Guy Guarantees

Landlords may require personal guarantees from tenants, especially for smaller businesses or new ventures. A personal guarantee means that the individual tenant's personal assets could be used to cover unpaid rent or other liabilities if the business defaults on the lease. However, there are different types of guarantees, and tenants should understand the distinctions.

### **Unrestricted Personal Guarantee**

An unrestricted personal guarantee holds the tenant (or business owner) fully responsible for the entire lease term, including all rent and damages that might arise, regardless of whether the business vacates the premises early.

This could expose the tenant's personal assets—such as savings, investments, or real estate—to significant financial risk if the business is unable to meet its obligations under the lease.

### **Good Guy Guarantee**

A Good Guy Guarantee is a more tenant-friendly alternative to an unrestricted personal guarantee. It is common in New York commercial leases and provides tenants with an opportunity to mitigate their liability if they need to vacate the premises before the lease expires.

Under a Good Guy Guarantee, the tenant (or the individual signing the guarantee) agrees to personally cover the rent and any obligations only up until the point they vacate the premises. As long as the tenant vacates the property in good standing—typically providing proper notice, paying all outstanding rent, and leaving the space in the agreed condition—they will not be held personally liable for the remaining lease term.

### **Advantages of a Good Guy Guarantee for Tenants:**

- **Limited Liability:** Unlike an unrestricted personal guarantee, a Good Guy Guarantee limits the tenant's personal liability to the time they occupy the premises. Once the tenant vacates properly, their personal obligation ends, which is far more favorable for protecting personal assets.
- **Flexibility:** A Good Guy Guarantee gives tenants flexibility if their business circumstances change. It allows them to exit the lease early, as long as they follow the terms of the guarantee, without being responsible for the entire remaining term of the lease.
- **For landlords,** a Good Guy Guarantee provides assurance that the tenant will leave in an orderly manner if they need to break the lease, avoiding prolonged vacancies or legal battles. For tenants, it offers a more reasonable option compared to an unrestricted personal guarantee, reducing long-term financial risk.

## **9. Insurance Requirements**

Most commercial leases will specify insurance requirements for both the landlord and the tenant:

- **Tenant Insurance:** Tenants are typically required to maintain liability insurance and property insurance for their contents and business operations.
- **Landlord Insurance:** The lease may also outline the insurance the landlord is responsible for, such as property insurance for the building itself. Make sure both parties have sufficient coverage.

## **10. Legal Review**

Finally, given the complexity of New York commercial leases, it is essential to have the lease reviewed by an attorney experienced in commercial real estate law:

- **Customized Negotiation:** Every business and property is unique, and having an attorney involved early in the process ensures that the lease reflects your specific needs and goals.
- **Preventing Disputes:** A well-drafted lease helps prevent misunderstandings and disputes, potentially saving you significant time and money in the future.

## **How We Can Help**

At James G. Dibbini & Associates, P.C., we have extensive experience assisting both landlords and tenants with negotiating, drafting, and reviewing commercial leases in New York. We understand the complexities of commercial real estate law and can help ensure that your lease protects your interests, whether you are leasing your first space or managing a portfolio of properties.

If you need assistance with a commercial lease, please contact our office at (914) 240-8270 or [jdibbini@dibbinilaw.com](mailto:jdibbini@dibbinilaw.com) to schedule a consultation. We are

here to help guide you through the process with confidence.

The attorneys at James G. Dibbini & Associates, P.C. collectively have over 50 years of experience providing legal services in the areas of:

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