

AVOIDING COMMON LEASING PITFALLS



Between issues with the substantive provisions of a lease and errors made in executing the final version, a lot of things can go wrong—even in a well-drafted and negotiated lease. Here are some issues to watch out for.

SUBSTANTIVE ISSUES

Substantive issues often arise when the parties use a form lease that either has not been updated recently or does not fit the circumstances that apply to the specific tenant or leased premises. Even if you are using a lease you've used before, always carefully read the lease before sending it to the other party and make sure the terms fit the specific transaction.

LANDLORD OR TENANT OBLIGATIONS?

- **Repairs:** Forgetting to include detailed provisions about who is responsible for repairing and replacing various parts of the building can lead to disputes. Generally, in multitenant buildings, landlords are responsible for repairs to important structural elements, such as the roof and slab, and the tenant is responsible for repairs inside the leased premises. Frequently overlooked items include parking lot repair and replacement and the replacement of storefront glass. In single-tenant leases, the lease should state whether or not the tenant is responsible for all repairs, including structural repairs.
- **Maintenance:** An oft-neglected maintenance obligation is snow removal. The lease should specifically state whether the landlord or the tenant is responsible for removing snow from sidewalks and parking areas.
- **Cabling Removal:** More and more often, tenants want to be able to install their own cabling inside the walls

and ceiling of the leased premises, which may not be useful to the next tenant and may require removal. If the lease does not require the tenant to remove the cabling at its expense upon termination or expiration of the lease, the tenant will likely not be required to do so, adding an extra expense in reletting the premises. If the tenant will be installing cabling, the lease should specify if the tenant will be responsible for removing the cabling and repairing any damage caused by the removal.

INSURANCE PROVISIONS

While the attorneys for the landlord and the tenant are useful for negotiating the language of the lease provisions regarding insurance coverage, the provisions should ultimately be reviewed by the landlord's insurance broker to make sure that coverage amounts are correct and that the provisions make sense with the state-specific insurance scheme. For example, insurance company licensing rules and requirements vary by state, and some states may have specific licensing requirements that should be addressed in the lease. Make sure that your insurance broker reviews the final insurance provision.

LEASE EXECUTION ISSUES

After negotiating, parties are often in a hurry to get a lease signed, which can lead to mistakes in its execution. Always give the lease one final, complete review before signing it to avoid issues like the ones below.

- **Wrong Lease Commencement Date:** Imagine a scenario in which all parties had anticipated the lease would commence on a specific date, but the negotiations took longer than expected. The negotiations focused on other terms of the lease, and no one remembered to update the lease commencement date. This is especially problematic if other key dates, such as the date by which tenant improvements must be completed, are based on the lease commencement date. Always check all dates in the final document.
- **Forgotten Exhibits:** Leases frequently include placeholders for exhibits to be attached in the execution version, and parties frequently forget to attach important exhibits, such as a depiction of the leased space and lists of exclusive or prohibited uses. The parties should carefully review the final lease to make sure that all exhibits are attached and that the attached exhibits are the final versions agreed to by the parties.

Taking extra care to watch for common leasing issues can save all parties from the extra headache of leasing errors. [B](#)

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