



Commercial Lease Check-list/Questionnaire

Preliminary Determinations

A. Capacity and Consent of Parties

Make sure all parties have legal capacity to enter into the lease and that they voluntarily consent.

B. Conditions of Lease

1. Are there any conditions to effectiveness of lease and commencement of its term, e.g.:
 - a. Delivery of possession of leased premises on or before specific date?
 - b. Ability to obtain zoning variance for tenant's intended business use?
 - c. Ability to obtain business or other license required for operation of tenant's business?
 - d. If landlord is required to construct new building, landlord's ability to obtain financing?
 2. What is deadline for satisfaction of condition?
 3. What steps, if any, must party take to indicate satisfaction of condition (e.g., written notice to other party)?
 4. What will effect of failure of condition be?
 - a. Automatic cancellation of lease.
 - b. Cancellation on written notice.
 - c. Waiver of condition.
 - d. Option or obligation of party intended to benefit from condition.
 - (1) To extend deadline for satisfaction of condition; or
 - (2) To cancel lease.
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C. Term of Lease

1. Will term be for:
 - a. Fixed period?
 - b. Month-to-month?
2. If term will be fixed:
 - a. What is length of term?
 - b. Does term commence on:
 - (1) Specified date?
 - (2) Occurrence of specified event?



3. Will tenant be granted any right to extend term?
 4. Will occurrence of any event (other than tenant's default) give either party right to terminate lease before its natural expiration, e.g.:
 - a. Landlord's sale of leased premises?
 - b. Tenant's loss of legal right to operate its particular business?
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D. Rent and Security Deposit

1. For fixed or minimum rent under lease:
 - a. What is amount?
 - b. When does it commence?
 - c. At what intervals is it payable?
 2. For commercial lease, will tenant be required to pay percentage rent, and if so:
 - a. On what basis will percentage rent be calculated, e.g., gross receipts of tenant?
 - b. What percentage must be paid to landlord?
 - c. At what intervals is it payable?
 - d. When does it commence?
 - e. Is it in addition to, in lieu of, or offset against, minimum rent?
 3. Will amount of basic or minimum rent increase over term of lease, either by:
 - a. Fixed dollar amounts at scheduled intervals?
 - b. Increases tied to:
 - (1) Property taxes?
 - (2) Operating expenses?
 - (3) Consumer price index or some other index for inflation?
 4. Will lease be "net" to landlord, i.e., require tenant to pay, in addition to rent:
 - a. Property taxes?
 - b. Insurance?
 - c. Other operating expenses?
 5. Is tenant required to post security deposit, and if so, what amount?
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E. Use of Premises

1. Will tenant's use of premises be limited to specific business?
2. Will tenant have right to change its use of premises during term of lease:
 - a. With landlord's prior approval?
 - b. Without landlord's prior approval?



- c. Subject to any other conditions?
 - 3. Will there be any specific restrictions on tenant's use, such as prohibitions against:
 - a. Nuisance, waste, and unlawful purposes?
 - b. Use or storage of hazardous materials and substances?
 - c. Insurance hazards?
 - 4. Are there any CC&Rs or building rules and regulations with which tenancy must comply?
 - 5. For other property owned by landlord:
 - a. Will landlord's use be restricted because of non-competition covenant given to tenant?
 - b. Will landlord be required to perform any affirmative acts on other property for benefit of tenant?
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F. Construction of New Building or Other Improvements

- 1. If leased premises will consist of new building to be constructed:
 - a. Who has responsibility for:
 - (1) Construction?
 - (2) Payment of construction costs?
 - (3) Preparation and cost of preliminary plans and specifications and cost estimates?
 - (4) Preparation and cost of final plans and specifications and working drawings?
 - (5) Obtaining government approval for project?
 - b. Has party responsible for construction obtained construction and permanent financing for project?
 - c. If party has not obtained financing, is lease contingent on that party's ability to obtain financing?
 - d. What are commencement and completion dates for construction?
 - 2. If leased premises consist of existing building or space, is tenant permitted to make alterations or improvements to leased space?
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G. Allocation of Financial Risks, Responsibilities, and Expenses

- 1. Which party will be responsible for maintaining and repairing:
 - a. Leased premises?
 - b. Any common areas?
- 2. Who will be obligated to pay following:



- a. Property taxes?
 - b. General and special assessments?
 - c. Utilities?
3. Who will be required to maintain and pay cost of insurance on:
- a. Leased premises?
 - b. Any common areas?
4. For each party required to insure:
- a. What types of insurance are required?
 - b. What amounts of insurance are required?
5. Is either party obligated to repair or rebuild in event of:
- a. Partial destruction?
 - b. Total destruction?
6. Does either party have right to terminate lease for:
- a. Partial destruction?
 - b. Total destruction?
7. If all or portion of leased premises is condemned:
- a. Will lease terminate as to portion condemned?
 - b. Will lease continue in effect as to any portion not condemned, and if so:
 - (1) Will amount of rent payable be reduced pro rata or on some other basis?
 - (2) Who will have obligation to do any necessary restoration?
 - c. Will lease provide for how any condemnation award is to be shared between landlord and tenant?

NOTE: Unless otherwise provided in the lease, distribution of the award is determined by law.

H. Transfer of Interests in Property

- 1. Will any restrictions be placed on tenant's right to sublet or assign leased premises?
- 2. Will tenant be granted option to purchase, or right of first refusal to purchase, leased premises?
- 3. On landlord's sale of leased premises, will:
 - a. Landlord have right to terminate lease?
 - b. Will lease continue in effect?



I. Requirements of Landlord's Lender

Specific requirements must be elicited directly from the lender involved.

1. For existing financing on leased property, what restrictions and requirements are contained in security instruments or loan documents for leases entered into by landlord?
2. If new financing is to be obtained:
 - a. Has preliminary or binding commitment been obtained from specific lender?
 - b. If so, what requirements or restrictions does lender impose on leases entered into by landlord?