

## **Location, location, disaster; seven secrets of leasing success**

**Business leasing blunders. The hard lessons my clients learned when leasing business spaces.**

### **The path to leasing perdition**

1. No vision of success, or priority list, or personal leasing network, so
2. The beginner falls in love with a space based in nothing but emotion, so they
3. Enter into a lease without giving the negotiation the consideration it deserves; they just want to get in and get open. Which leads to these undesirable outcomes

**Sign of the times.** Imagine getting ready to open, then being told you need to come up with thousands of dollars for a new sign? This client didn't notice the lease clause that required all new tenants to install a lighted blade sign. A blade sign required city sign permits and expensive installation. That final expense took all their operating capital and the business withered and died.

**Trashy neighbors.** Business owner's lease said garbage service is provided by the landlord. Unfortunately, the other tenants dominated the containers. There was no action required of the landlord if service was insufficient. This is an example of an unbalanced lease, the landlord has no accountability. And yes, I checked the garbage here before we signed the lease!

**Teenager trees.** This client signed a lease in January. Then, in April, the leaves sprouted on the juvenile trees the city planted in the sidewalk wells in front of the shop. By May, the sign and windows were totally obscured. When the owner contacted the city, she was told the trees will grow, eventually.

**Regulatory twilight zone.** Some clients have come to me after signing a lease, then being told their business is not permitted in that location. This is due to zoning restrictions. What's the solution for them? Well, they signed a 1, 3 or 5 year business contract. The only alternative is to negotiate an early exit. If you just walk away, the legal complications could be significant.

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**Dude, where's my parking?** One unscrupulous strip mall owner built a new business space in what was the corner of the parking lot. Existing tenants lost 50% of the parking, along with a new business competing for the remaining parking. Client had no recourse, due to the lease terms.

**Clawed by the clause.** One client leased a space in an office complex for his restaurant. He built out and operated for the first four years of his five year lease. This tenant was then told that a corporate tenant had decided to lease out the entire four storey building. The tenant had 90 days to shut down and move. Why? A clause in the lease that provided 90 days to vacate if an offer was made on more than 80% of the rentable space.

**Never can say goodbye.** From can't stay to can't leave. This client was offered a lease on space in a grocer's parking lot. The purpose was to build a little espresso shack in the parking lot. Unfortunately, a clause in the lease stated that once the structure was built, the building and contents belonged to the store. The owner couldn't take anything if she decided to leave.

**Why do these things happen?** Too many new business people believe that there are rules for commercial leases, just like there are rules for residential leases. Title 59.18 of the Revised Code of Washington presents a whole catalog of rules, rights and responsibilities for both landlords and tenants. Isn't it like that for commercial leases?

No. I like to say there is only one rule in commercial leasing. The rule is that there are no rules! Unlike residential leases where there is an imbalance of power, commercial leases are considered a negotiation of equals, whatever you put in the lease are your rules.

I'm oversimplifying this, because there are business law issues like contract law and the uniform commercial code. Those rules generally aren't your problem, though, it's what's in the lease that will get you. You avoid this through lease negotiations.

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**Negotiations.** First and foremost, your negotiations will be much more satisfactory if you have three things. **First, a clear vision of what you want,** with a property comparison checklist prepared ahead of time. **Second,** time to do enough research, space hunting and broker communication to **have a network** and some understanding of the market (we took a year, and we found our space through our network). **Third,** a selection of **some useful number of alternative sites.** At least two but preferably more.

**Should I take a prospective lease to a lawyer?** Of course, but without your vision of success, your lawyer can't do much for you. Your attorney can't help you get what you want, if *you* don't know what you want!

**Looking at a lease for the first time.** In general, most leases can be divided into thirds. Many are about one third boilerplate, to address business law issues. Your attorney will review this part for you, so you can leave that for later.

The next third is the legal description of the lease, who fills each role, who is responsible for payments and defaults, consequences, penalties and reliefs. You will review these with your attorney, to point out areas that need more explanation or terms that are deal breakers. Your attorney will tell you the law but you need to tell your attorney what you want, and don't want, when you review this section.

The last third is where you might find the most opportunities. These are operational clauses that impact your day to day operations. These you need to study in detail. Ideally, you would make notes for your attorney about changes you'd like to see.

Remember, whatever is in the lease is the law for your commercial tenancy. You can't "work it out later" if you sign a lease. Once the ink hits the paper, you're stuck with whatever you agreed to. If you like it, lease it. If you have any doubts or unresolved questions, **walk away.**

Seven secrets of leasing success

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### **1 Vision of success with property specifics**

- Customer needs. Who is your target Market? Where do they want to be served? Where do businesses like yours serve customers like the ones you want to have?
- Your business operational needs. What are your minimum physical requirements to start? Remember comma you want to invest only in activities that directly produced income
- Regulatory needs. Can you even run the business that you want to start in the location you are considering?

### **2 Take the time to do your research and build your leasing network**

- Here is that network again! Business leasing is opaque at best, so your only chance for success is to get to know the people on the inside, your leasing network.

### **3 Know the difference between location and site**

- Location is visibility and traffic volumes
- Site is ingress, egress, character and purpose of adjoining businesses, congruence with your market segment

### **4 Talk to any other tenants in the property**

- Who are your potential business neighbors?
- They want to meet you, too.

### **5 Check lease for mutual accountability**

- Like the landlord tenant laws for residences, your lease should spell out clear rights and responsibilities for you *and the landlord*. Clarify and document changes. Don't sign anything that has any new language you did not request.

### **6 Check the Landlord's reputation with other tenants and the business community**

- This could have been number one, it's that important. The landlord will be your business partner, so work with a good partner.

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### **7 Yes, you need an attorney**

- The business you save will be your own.

There are links in the show notes for a negotiability chart, several in-depth writings for prospective commercial tenants and some checklists.

Commercial lease types explained

<https://leasequery.com/blog/commercial-lease-types-explained/>

Guide to leases for commercial property

[www.indeed.com/hire/c/info/lease-for-commercial-property](http://www.indeed.com/hire/c/info/lease-for-commercial-property)

How to Review a Commercial Lease: Lease Comparisons

<https://guides.law.mercer.edu/c.php?g=1116485&p=8990824>

Commercial lease checklists

<https://www.contractsounsel.com/b/commercial-lease-checklist>

Lease analysis tool summary

<https://www.seattle.gov/documents/Departments/economicDevelopment/restaurants/FINAL%20Summary%20Lease%20Tool.pdf>

Full lease analysis tool

<https://communities-rise.org/wp-content/uploads/2021/01/CR-FINAL-Full-Lease-Tool.pdf>

Negotiability Table

<https://kevinyourbusinesscoach.com/NegotiabilityTable.pdf>

Sample Commercial Lease

<https://kevinyourbusinesscoach.com/CBAStandardRetailMultiTenantLeaseAgreement.pdf>