

Clause Negotiation Cheat Sheet

✓ Start Here

Determine your needs

Before approaching any landlords, take some time to review your business plan and determine what kind of space you will need to run your business successfully.

Determining the special needs of your business will help you identify clauses in a lease agreement that you should consider negotiating.

Survey the market

Research the real estate market and get an idea for standard rent prices. Identify three or four suitable spaces on the market and do some surveying. Find out what current tenants are paying for rent and what incentive they received as part of their leasing agreement.

Rent-free Periods

There are two separate rent free periods that can often be negotiated. Firstly, landlords will usually agree to a rent-free 'fixturing' period while you are completing leasehold improvements.

A second 'start-up' period can be negotiated to allow for business and sales to pick-up. This is especially common in the tourism sector during the slow season.

Leasehold Improvements

Usually, tenants cannot make any changes to the premises without consent from the landlord. To avoid delays, you can have plans approved before signing the lease, or insert a clause that says landlord approval is to be provided in a reasonable and timely fashion. Also be aware of a clause that requires you to restore the space to its original condition at the end of your lease.

Intended Uses

Most leases will specify what kinds of business operations are permitted on the premises. By making this clause as broad as possible, you keep your options open to sublet some space and/or diversify your business operations. For instance, if you've leased space for a bookstore, and want to eventually turn it into a café-bookstore, a broad intended-use clause will make for an easier transition later on.

Lease in months, not years

Instead of agreeing to a three or five year lease, setting it in months allows you to control what time of year you will be renegotiating the lease. For instance, landlords will be receiving far fewer offers in January than they would in June or July. Ending your lease in during the slow season means you will have less competition when it comes time to renegotiating your lease.

Parachute Clause

Negotiate a clause that specifies a penalty fee for breaking the lease after a certain time frame. Without this clause, you may be responsible for the full lease if you choose to move.

Also, specify your right to terminate the lease without penalty if disruptions to your business occur. For example, if a bar or pub moves in next to a children's daycare, a parachute clause would give the daycare the option to relocate.

Recession Clause

Most leases come with a review clause that allows the landlord to raise the rent every two to three years due to inflation or higher cost of living. Specify a cap on increases in your lease agreement.

To protect yourself against a rent increase during a recession, include a clause in your lease that entitles you to a rent freeze (same rent) or a downwards review (lower rent) when the Bank of Canada announces a downturn in the economy.



How To Negotiate Your Lease

Negotiate with several locations at a time

Create competition for your tenancy by negotiating with multiple landlords. This not only keeps you informed about what you are entitled to, but also gives you greater bargaining power.

Don't get attached

Try not to fall in love with any particular space. Stay objective in your search and be firm in negotiations. Be prepared to leave the deal, as agents/landlords are less likely to provide concessions if they feel you are attached to the location already.

Ask for more than you want

Landlords are not likely to agree immediately to your requirements. Rather, they will counter offer and negotiate. Ask for more than you want so that you are not conceding any of your actual needs.

Get help

If you find yourself too busy to research the market or handle negotiations, hire a real estate broker to assist you. There are also specialized real-estate lawyers that can help you with more complex deals.

Do not accept the standard lease

Landlords will usually have a standard lease agreement that they start all negotiations with. This document is almost certainly written in their favour, and will only grant incentives if you ask!

Parking and Regulations

Ensure that you have a number of parking spots on the lot reserved for your clients and staff. Even if there are plenty at the start of your lease, the landlord may eventually begin leasing out parking spots to third parties.

Also review the general regulations of the property. Setting signage, smoking, pets, noise and cleanliness standards are requirements that you may consider including in your lease agreement.

Right of First Refusal

You may want to negotiate a first-call on any new space that opens up on the premises if you have future plans to grow your business. This means that the landlord must offer you the space before offering it to any external parties.

With private locations that are not in an office tower or mall, you may also be able to add a clause that gives you the option to purchase the property after a number of years.



Clauses for Retail Leases

Non-Compete Clause

One of the most important clauses to include in any retail lease, a non-competes clause will prevent the landlord from opening a similar business in the same complex.

Co-Tenancy Clause

The success of a shopping mall is often tied directly to the anchor tenants in the complex. Anchor tenants include major franchise department stores, drugstores, and other 'big box' stores. Your lease should include a clause that allows you to terminate the lease if the anchor tenant vacates.

Limit Your Personal Guarantee

Landlords will often require you to sign a personal guarantee; a promise that you will make rent payments. If you were to default, the landlord will use this guarantee to seize your personal assets. Try to remove this clause all together. Otherwise, your lease agreement should include a limited amount of time and amount that you can be held personally liable for.

Hours of Operation

Most retail leases will specify what hours your business must be open. You may want to tailor these operating hours to your business in your lease. Operating your business during slow times will incur excess labour and operating expenses. For instance, some breakfast restaurants operate only in the daytime despite being in a mall that is open into the evening.

Utilities

Many complexes will assign a percentage of the total utilities bill to your business based on square footage. This would be to your detriment if, for example, you were a large retail store located next to an energy-demanding small bakery. So that you are not paying the bakery's utility bill, you should include a utilities clause in your lease based on your business's usage.