

Congratulations on taking the next step for your business!

Since this will be the first time you will be leasing commercial space or it has been a while since the last time you leased space, this handout will help clarify the steps from beginning to end.

NY Process

-Part of the searching process is making sure that the use you would like to use the space for is allowed in the correct commercial zone. Each municipality is different in regards to what they allow in their zones. It is always recommended to speak with the zoning/code/building inspector’s office to get clarification.

-Once you get clarification on the allowed use, we search, view, and find a property that you would like to submit an offer on.

-If there is work to be done by the Tenant, it is highly recommended to get contractors in to give estimates for the work. Examples of contractors are General Contractors (framing/sheetrocking), Licensed electricians and/or Licensed Plumbers, Licensed HVAC (Heating Ventilation and Air Conditioning) contractors, and/or painters.

-Speaking in general terms, for retail and industrial space, the Tenant does the build out and in office space, the Landlord does the build out (depending on if the Lease is 3 years or more so the Landlord can amortize the cost of the build out over the term of the Lease.) In all cases, except for a “cold dark shell”, the landlord is required to provide working heat and hot water. The utilities may need to be turned on in the Tenant’s name in order to verify. Something to keep in mind is that Air Conditioning is NOT a requirement and does not have to be provided.

-If the space works for your use, then we submit a written offer. This could be in the form of a Letter of Intent (LOI) or an email listing the terms, Lessor (Landlord) and Lessee (Tenant) information, and any other pertinent details that will help the Landlord or Landlord’s attorney draw up the Lease. Included in the written offer is a copy (that is supplied by the Lessee) of the Lessee’s credit score AND report from 1 of the 3 major credit reporting agencies (Experian, Transunion, or Equifax).

-Once we have negotiated the terms, the LOI or email is sent to the Landlord or Landlord’s attorney to have the actual Lease drawn up and sent to the Tenant or Tenant’s attorney.

-It is always RECOMMENDED AND ADVISED to hire a REAL ESTATE ATTORNEY, who specializes in Commercial Real Estate to review the Lease since it is a legal and binding document, but it is not required.

-It is always RECOMMENDED AND ADVISED to read the Lease yourself since the Lease is between you and the Landlord. If there are items you are unsure of, this is where the COMMERCIAL REAL ESTATE ATTORNEY will be able to clarify any items in the Lease.

-It is illegal for a Licensed Real Estate Agent to review and give advice on any legal documents and would be in jeopardy of losing their license if they did so.

-At this time, the Landlord or Landlord’s attorney and the Tenant or Tenant’s attorney will negotiate the items in the Lease until both are satisfied.

-Once the Lease has been approved by both sides, the Tenant will sign 2 copies the Lease and submit the signed copies along with the security deposit and 1st month’s rent to the Landlord or Landlord’s attorney. Once the Landlord signs and the Tenant receives an original copy, the Lease has been executed and legally binding.

-Congrats, you are a Commercial Tenant!

Some items to know about:

Security deposit: Commercial Landlords typically base the security deposit on a prospective Tenant’s credit score and report. If the score is about 700 or above, the usual security deposit is 2 month’s worth of rent. If the score is below 700, the security deposit could be anywhere between 3 to 6 months of rent, and could be negotiated where after every 12 months of on-time rent payment is shown, 1 month of security deposit is credited back to the Tenant, until the Landlord holds a minimum of 2 months.

Types of Leases: -Triple Net (NNN)-The Tenant is responsible for the base rent PLUS the proportionate share of the Taxes, Property Insurance, and Common Area Maintenance (CAM) expenses. Sometimes, these expenses are called Pass Through Charges. They are expenses that are “Passed Through” to the Tenant to pay. The Tenant is also responsible for Gas, Electric, Phone, and Internet. Depending on the building, the tenant would also be responsible for the water or it is

charged in the CAM expenses.

-Double Net (NN) and Single Net (N)- The Tenant is responsible for the base rent PLUS 2 or 1 of the previously mentioned property charges. The Tenant is also responsible for Gas, Electric, Phone, and Internet. Depending on the building, the Tenant would also be responsible for the water or it is charged in the CAM expenses.

-Modified Gross (MG)-The Tenant is responsible for the base rent which INCLUDES the Taxes, Property Insurance, and Common Area Maintenance (CAM) expenses. The Tenant is also responsible for Gas, Electric, Phone, and Internet. Depending on the building, the Tenant would also be responsible for the water or it is charged in the CAM expenses.

-Full Service- The Tenant is responsible for the base rent which INCLUDES the Taxes, Property Insurance, Common Area Maintenance (CAM) expenses, Gas, and Electric. In some cases, Internet is also included.

Above Base Year: Above Base Year is a term used typically in a Modified Gross lease, but could be used in other type of leases. Above Base Year usually refers to the Taxes, Insurance, and Common Area Maintenance (CAM) expense, where in the first year, they are included in the base rent. IF there is an INCREASE, the Tenant would be responsible to pay for the PROPORTIONATE share of the INCREASE.

Due at Lease Signing: The upfront amount that is due at Lease signing is typically the security deposit and the first month’s rent. This could vary depending on the building. Some Landlord’s require the typical 2 month’s (or more depending on the credit score) rent of the last year of the Lease as security.

Rent Concession: If there is work to be done by the Tenant, a Rent Concession (free rent) period is usually negotiated to allow for the time it takes for the work to be done. The normal Rent Concession period that the Landlord usually agrees to is 1-3 months, depending on the work. For longer periods, the Tenant should justify the requested longer period by submitting contractors estimates.

- Option(s):** An Option is an additional Lease term period after the Initial Lease term. It is an added benefit for the Tenant because the rent amount is predefined. A typical example is a 3 year lease with an additional 3 year option. In the Tenant’s eyes, the initial term is 3 years with the tenant “option” to renew for an additional 3 years. In the Landlord’s eyes, it is a 6 year lease because the Tenant is the only party that can exercise the 3 year Option period after the Initial 3 years.
- Annual Increases:** Most Landlords require an Annual Rental Increase. Sometimes, it is a predetermined dollar amount, but most times it is a percentage amount. Annual Increases are in the range of 1% to 5% of the base rent. Some Landlords will include the Consumer Price Index (CPI) to this Lease clause and it would be the higher of the two. For instance, “3% annual increase or CPI, whichever is greater”
- Liability Insurance:** Commercial Landlord’s typically require the Tenant to acquire and maintain LIABILITY insurance for the premises and naming the Landlord as additionally insured. The detailed insurance requirements are usually a paragraph in the Lease. Before access or a key is given for the Leased space, a Certificate of Insurance (COI) is required. This is usually provided with a 1 page document called an ACORD 25. It is recommended to speak with a Commercial Insurance agent or broker for more details.
- Certificate of Occupancy (CO)/ Certificate of Compliance (CC):** Depending on the municipality, a Certificate of Occupancy (CO) or Certificate of Compliance (CC) will be required to legally use the space. This is issued by the municipalities Building Department and usually requires the Tenant to fill out paperwork, submit floor plans, and pay a fee. The Landlord is USUALLY, BUT NOT ALWAYS, responsible to have emergency lights, exits signs, smoke and carbon monoxide detectors in working order as well as fire extinguishers currently tagged. It is recommended to speak with building department of the municipality where the space is Leased or going to be Leased to find out the process and fees associated with the CO.

Special Uses/
Special Permits:

If your use requires a special permit that requires going to a specific municipal’s board to get approval, it is recommended to speak and get guidance from a LAND USE ATTORNEY.

Personal Guaranty/
Good Guy Guaranty:

Some Landlords require the Tenant to be PERSONALLY LIABLE for the Lease, should the entity on the Lease default anytime during the Lease. Other Landlord’s are offering a GOOD GUY PERSONAL GUARANTY. If the Tenant is NOT in default, A GOOD GUY PERSONAL GUARANTY (GGG) allows the GUARANTOR, after a certain period of time, to be released from the Lease obligation by giving the Landlord a certain number of months notice (usually 3-9 months) before ending the Lease. In addition to the notice, the Tenant may also have to reimburse the unamortized amount of the broker commission for the remaining balance of the Lease as well as any Tenant Improvements (painting/carpeting/ect) or Rent Concession (Free Month(s)) that was given in the Lease. It is recommended to speak and get guidance from a COMMERCIAL REAL ESTATE ATTORNEY in regards to a Personal Guaranty and a Good Guy Personal Guaranty.