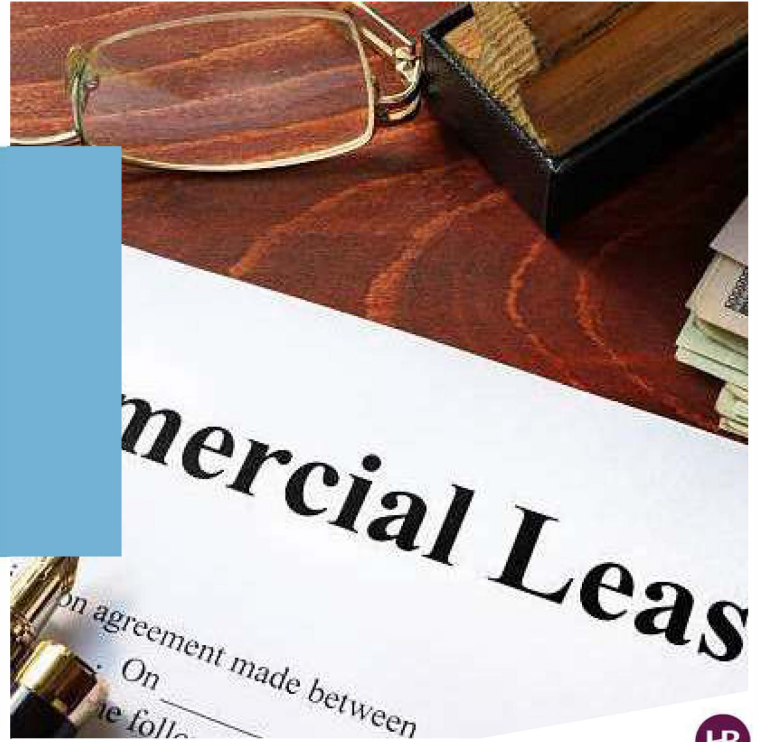


# SIGNIFICANT ISSUES IN COMMERCIAL LEASES

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## SIGNIFICANT ISSUES IN COMMERCIAL LEASES

Leases are documents which define the *elements of a relationship* between the Landlord and Tenant.

They are dense agreements filled with covenants, procedures and definitions.

As legal counsel we .....

- Review documents to see the issues;
- Review the issues with our clients; and
- Work together with our clients to obtain a lease agreement which they find acceptable.

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## SIGNIFICANT ISSUES IN COMMERCIAL LEASES

### *“Just look at the important stuff”*

Preparation:

- ✓ Make certain both client and counsel understand what is intended as a part of a “limited scope review”
  
- ✓ Have a good grasp of the client’s intended use.
  
- ✓ Ask the client to explain the transaction from their perspective. Often this may include feedback from the real estate broker who put the Landlord and Tenant together.

## SIGNIFICANT ISSUES IN COMMERCIAL LEASES

### *Overview*

Based upon the client’s level of familiarity with the lease process sensitize a client to the various aspects of the lease including the importance of understanding:

- (i) The economics of the deal
- (ii) The Use of the premises
- (iii) The behavior required of Landlord and tenant during the term of the lease
- (iv) Work to be done by Landlord and Tenant
- (v) The allocation of risk
- (vi) The rights and limitations on transferability and subleases
- (vii) The definition of default and remedies on default
- (viii) The end of term responsibilities of the Landlord and Tenant
- (ix) Any preferential rights granted to the Tenant

## SIGNIFICANT ISSUES IN COMMERCIAL LEASES

### Economics of the Deal

Have the client confirm the basic terms that make up the economics of the deal.

- Rent and escalators
- Percentage Rent (if applicable)
- Additional Rent (gross vs net lease)
  - ❖ Pass through operating expenses (Op Ex)
  - ❖ Utilities
  - ❖ Insurance
  - ❖ Taxes
  - ❖ Special costs
- Security deposits
- Term
  - ❖ Execution Date - Commencement Date and Rent Commencement Date
  - ❖ Sensitivity to delays on delivery

## SIGNIFICANT ISSUES IN COMMERCIAL LEASES

### Economics of the Deal

#### Operating Expense Pass Through

One of the provisions of a lease in which we see the greatest amount of variance is the definition of operating expense pass throughs. Provisions can range from 3 sentences to 3 pages. Some gotchas to look out for....

- Common area definition and sharing ratio
- Deemed Rent pass through – management offices, health facilities conference facilities
- Cap x costs
- Limited on or no audit rights
- Mixed use allocations
- Casualty loss deductible pass through

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"Big Issues In Leasing"