

Business Law

December 2014

Why You Should Sign the Landlord's Standard Form Lease

At various times during the life of your business, you will be faced with having to lease premises. At some point during the negotiations for those premises, you will receive the landlord's standard form of lease amended to incorporate the negotiated business terms and your landlord will expect you to sign it (or at least hope you will sign it) with few, and preferably no, changes. Since there is no such thing as a standard form of lease – each landlord makes up its own form – the lease you receive will likely range in size from 30 to over 100 pages, often with very small print and bad, and sometimes incomprehensible, English.

Instead of spending hours reading it and asking for a lot of changes, which make your landlord have to feign outrage, below is a non-exhaustive list of reasons why you should simply sign the lease you receive from the landlord.

You should not read and simply sign the lease you receive from the landlord if:

- you want the landlord to be able to modify and condition (or maybe forget to include) the agreed upon business terms in ways that you did not expect;
- you want the landlord to be able to take its time doing the work it agreed to perform, even if it stretches beyond the time it originally promised it would be done;
- you want to start paying rent even though the Premises are not ready for occupancy due to the landlord not having completed the work it promised to do;
- you want to be prohibited from granting security in your assets to your lenders, which will make it virtually impossible to obtain financing for your business;
- you want to unknowingly grant security over all of your assets to the landlord, thereby virtually assuring that you will not be able to obtain financing for your business;
- you are leasing premises in an office building and you do not want the landlord to have to heat or cool your premises;
- you want to have to obtain insurance with provisions that your insurer will refuse to provide;
- you want to discover that the premises are significantly larger than you what bargained for and, as a result, your rent costs are significantly higher than what you had budgeted for;
- you do not want the right to be able to verify the accuracy of the operating costs that the landlord is charging you or be able to discover that the landlord has included expenses that it was not supposed to include, such as the renovation costs of its summer cottage;
- you do not want the landlord to be bothered having to do repairs or replacements to the building or the common areas. This is especially important if you like leaky roofs;
- you are leasing an entire building and want to be able to pay for the cost of replacing the roof of the building or all of the pavement/asphalt in the driveways and parking areas – especially when there is only a short period of time remaining in the term of the lease;

- you want to be able to pay for the cost of replacing the HVAC equipment – especially when there is only a short period of time remaining in the term of the lease;
- you want to be able to pay for the cost of cleaning up environmental contamination of the property even though you did not cause the contamination;
- you want to pay interest on late rent payments at a rate that would make credit card companies blush;
- you want the landlord to be able to electronically deduct what it wants from your bank account;
- you want to have to pay invoices from the landlord immediately on receipt and be in default if you don't;
- you don't want to have any recourse if you discover that you are paying for utilities being consumed in other premises;
- you want the landlord to be able to move your carefully chosen premises to another location in the building, or even to another building, and be able to pay for the cost of building out the new premises;
- you want the landlord to be able to terminate the long term lease you negotiated at any time

during the term because it wants to demolish or substantially renovate the building;

- you want the landlord to be able to increase the parking rates for the building without any type of limitation;

- at the end of the lease, you want to spend thousands of dollars removing improvements from the premises and the putting the premises in a better condition than they were when you received them;

- you want to be the landlord's insurer and pay for (or have your liability insurer pay for) repairs to the building that should have been covered under the landlord's insurance, even though you dutifully pay for your share of the landlord's insurance costs;

- you want the landlord to be free to come into your premises at any time and without any notice to carry out renovations to the building or show the premises to your competitors;

- you want to pay the landlord thousands of dollars in management fees because you want to carry out renovations to your premises;



- you want to ensure that the permitted uses of the premises are so narrow that the only companies to whom you can assign the lease or sublease the premises are those who do the same thing that you do;
- you want the landlord to be able to terminate your lease if you dare ask the landlord for its consent to sublease the premises;
- you want the landlord to be able to increase the rent if you sublease the premises or assign the lease;
- you want the landlord to be able to refuse its consent to your request to sublease the premises because you are going to charge a lower rent than what you are paying under the lease, or because the landlord has space available in its building or because the landlord at one time talked to your potential subtenant about leasing premises directly from the landlord;
- you want to make it impossible to ever sublease all or any part of your premises because one of the conditions of your doing so is that the subtenant has to covenant with the landlord to effectively become the guarantor of your obligations under the lease;
- you do not want to be able to vacate the premises even though it is no longer suitable for your business needs;
- you do not want to be able to have different locations within a wide radius of the premises;
- you want to severely limit the range of remedies available to you should the landlord default under the lease;
- you want the landlord's mortgagee (both current and future) to be able to ignore your lease and evict you from the premises should the landlord default under its mortgage;
- if the premises or the building are substantially damaged by fire or some other casualty, you do not want:
 - rent to abate while the repairs are being performed;
 - to have any right to terminate the lease regardless of how long the repairs will take;
 - the landlord to repair the building if it does not receive sufficient, or any, insurance proceeds, and yet you continue to have to pay rent;
- you don't want any notice of or an opportunity to cure a default before the landlord can terminate the lease or seize and sell your goods;
- you want the landlord to be able to keep all of your goods in the premises if it terminates the lease and not have any right to remove them;
- you want the landlord to have the option of having you pre-pay all of the rent for the remainder of the term of your lease because you are late in paying rent one month;
- you want to be able to pay double or triple the rent if you have to overhold beyond the end of the term of the lease;
- you want to be prohibited from registering notice of your lease on title to the property so as to enable a purchaser of the property to be able to ignore your lease and evict you from the premises;
- you want to be able to lose the benefit of special benefits that you have negotiated for (such as signage rights; parking rights; rights to extend the term; rights of first refusal to lease other space in the building; exclusivity rights; rights of first refusal to purchase the property) if you are ever in default of the lease at any time during the term;

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- you get an option to extend the term or renew the lease and want to be the only person in the world who has to pay an above market rent for the premises if you exercise such option; and
- you want the Landlord to be able to continue to tell other potential tenants that all of its other tenants have signed the lease without any changes.

Obviously, the above has been written as a satire. But in case you didn't catch the humour of it, the bottom line is you should always consult with experienced leasing counsel to review and negotiate the terms of any lease (or offer to lease) before signing.

Pallett Valo LLP Leasing Group

The legal leasing team at Pallett Valo understands the objectives of both landlords and tenants in leasing transactions, whether it be an office, retail, industrial, ground or multi-use leasing transaction. We excel in the drafting and negotiating of leases and lease-related agreements and strive to achieve win-win results. When things go bad, we have the expertise to assist both landlords and tenants in the enforcement and protection of their rights.

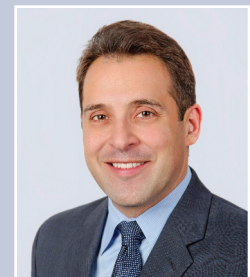
Contact Members of our Leasing Group



Murray Box
mbox@pallettvalo.com
905.273.3022 Ext. 240



Andréa Brinston
abrinston@pallettvalo.com
905.273.3022 Ext. 219



John Russo
jrusso@pallettvalo.com
905.273.3022 Ext. 282

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