



## Commercial leasing 101

Queens does not have a realtor dedicated to leasing commercial space.

Educate yourself on the opportunity available in queens

Below are a few answers to some question that might come up during a commercial lease.

1. What is a Lease? A lease is a temporary conveyance of the right to use and occupy real property (land) in exchange for payment or rent.
2. What is a Ground Lease? "a long-term (usually 99 year) lease of land only; such a lease typically involves commercial property, and any improvements built by the tenant usually revert to the landlord."
3. What is a Triple Net lease: NNN" where the tenant agrees to share building insurance costs, taxes and CAM with the other tenants in the center based on square footage of their space. Taxes and insurance costs are fairly easy to document but CAM cost can cover a myriad of expenses which can be anything from snow and ice removal to decorations for the mall or shopping center.
4. What is CAM? CAM (Common Area Maintenance) clauses are often future deal killers in the resale of a restaurant, and if you don't negotiate a favorable CAM agreement at the beginning of your relationship with the property owners, it may just break you before you decide to cash in!
5. Does the lease specifically state what you can use the building or space for? You need to make sure that the use is allowed by local zoning laws, as well. This is your responsibility, and not the landlord's
6. Make sure that you know exactly how long you can use the space, and get renewal terms, if possible
7. Think about how long your client wants to run a business in this location. 10 years? Do they want to be locked in for that long? Maybe start with a 3 year lease, with 1 year renewals thereafter
8. Assignability: What if you decide to reorganize into a corporation or partnership? The lease should be freely assignable to the new entity
9. Subleasing: If you decide that you don't need all the space, you may want to sublease a floor, or a portion of the space. This is a benefit that not all landlords wish to grant.
10. Common areas: If the space is part of a larger building, what areas do you get to use, and what are the terms? Lobby, elevators, parking garage, etc? Are there hours of operation?
11. Destruction or condemnation: If the building burns down or is condemned by the state, what happens to your interest in the property? You need to know and the lease needs to spell this out
12. Parking spaces: How many do you get? Do you get any? This is a huge consideration in many cases
13. Tenant Improvements: Who makes them? Who pays for them? Who keeps them when the lease is over?
14. Operating hours: Will the landlord require you to be open certain days and hours? In malls, landlords often have go dark requirements that prohibit tenants from "going dark," i.e. failing to open during certain hours or certain days. Be sure you are clear on this



## Commission

The buyer's agent commission is calculated by determining the total amount of rent that will be paid by the tenant during the initial term of the lease and multiplying that amount by the percentage commission that has been agreed to earlier.

The total amount of rent paid in the initial term of the lease is most commonly calculated by including the following specifics:

1. The acceptable length of the "initial term" of the lease will likely be indicated in the commission letter to be 1 month to ten (10) years.
2. When a lease provides for options to extend the lease after the initial term; for example, a lease with a five (5) year extension option, the commission for the option lease term is commonly paid at the start of the option term.
3. If the lease rental is structured on a full service basis; meaning that the stated rate of the rent per square foot contains the base amount of operating costs and taxes, usually simply calculating the amount of the monthly rent payments - plus any escalations that are possible to determine specifically at the time the lease is signed - result in the total amount of the initial term base rent that will be used to calculate the commission.

### What's Included in a Commercial Lease Document?

As you finalize the process of negotiating your commercial lease, you will be handed a commercial lease document. Here are the common sections of commercial leases, and a brief explanation of these sections.

1. **Parties**  
the official names of the tenant and landlord. Make sure your business is a party to the lease, not you.
2. **Premises**  
Describes the space you are renting. Verify that you understand how the space is assigned and what specifically you are paying rent on.
3. **Rent**  
Explains how the rent is calculated, including common area maintenance (CAM) and other costs associated with the lease. Common terms such as "gross lease" or "triple net lease" may be included here; make certain you understand what these terms mean.
4. **Term**  
Explains when the lease begins and ends. This section may also describe how the lease may be re-negotiated.
5. **Deposit**



Describes the security deposit the tenant is required to provide, and the circumstances under which it may be forfeited or returned.

6. **Hold Over**  
Explains what happens if the tenant does not leave at the end of the lease.
7. **Utilities**  
If utility costs are included in the lease, it explains how they are metered and distributed among the tenants. In some cases, each tenant may have a separate meter. If the tenant is paying the utilities, this section may explain the requirement to pay utilities and what happens if they are not paid on a timely basis. This protects the landlord if the tenant fails to pay utilities.
8. **Use/Restrictions**  
Lists the restrictions on use of the premises, including signs, hours of use, and limits on occupancy and sub-lessees.
9. **Taxes and insurance**  
Discusses who pays property taxes and insurance on the property. This section usually includes a requirement that the tenant provide proof of insurance on property and equipment in the leased space and liability insurance, to protect the landlord. Usually the tenant is required to indemnify the landlord [hold him/her harmless] in any liability suits against the tenant.
10. **Parking**  
Describes the parking available for the leased space. Some lease documents differentiate between where employees may park and general customer parking. Make certain that the parking space conforms to ADA regulations by providing adequate handicapped parking.
11. **Maintenance**  
Describes who is responsible for making and paying for maintenance and repairs. Most leases require tenants to pay for repairs due to "wear and tear" (common usage), with the landlord being responsible for extraordinary repairs due to major damage or failure of equipment.
12. **Assignment/Subletting**  
Some leases have a separate section describing the conditions under which you can sub-let the space.
13. **Options**  
Describes the options you may have to rent additional space in the building if it becomes available, or options to buy the property.
14. **Defaults and Remedies**  
Describes what happens if one party defaults (breaks the agreement), and the remedies available to the other party.
15. **Destruction/Condemnation**  
These clauses describe what happens if the leased space is destroyed or condemned.
16. **Subordination, no disturbance.**





Describes rights of the tenant if the landlord's lender forecloses on the property. This section protects the tenant against being ejected by a new landlord or the bank.

17. Estoppel

Explains what happens if there is a change in the landlord's situation, to verify that the tenant is living up to his/her duties as a tenant.

18. Attorney Fees

Agreement about who pays attorney fees in the event of a lawsuit between landlord and tenant.

19. Dispute Resolution

Some leases provide for alternate forms of dispute resolution, like mediation and arbitration.

Have an attorney review the terms of the lease, to explain any specific terms that you don't understand, and to look for issues that might be a problem for you or are not what you thought you agreed to.

### Commercial Real Estate Lease Types

Finding a landlord and tenant match in commercial real estate requires a commercial real estate lease type that benefits both. The needs of the landlord are income from rent and the control of costs to assure a profit. The tenant wants to peg their rental costs as closely as possible also. Using the right type of lease, they can both satisfy their needs with a bit of negotiation at times.

1. The Gross Lease

The gross lease in commercial real estate is sometimes described separately from the full service lease. However, the difference is not great, and most people consider them together. Learn how they are the same, the difference and how the gross commercial lease differs from other commercial real estate lease types.

2. The Triple Net Lease

The triple net lease in commercial real estate requires that the tenant pay a significant share of expenses of operation, as well as all taxes and insurance related to their rental unit. This type of lease helps the landlord by fixing their costs, as their rents are fixed. Tenants aren't fond of this type of lease especially in older properties.

3. The Modified Net Lease

As a compromise between the gross lease and the triple net, the modified net lease is quite helpful in helping landlords and tenants to structure lease terms that work for both. This article gives the details of how they differ from the other lease types.



#### Conditions to look for in the lease:

Always consider the resale implications when negotiating a lease. Resale value is often made or broken on several points:

- Obtain a long term lease with options. A five year lease with three five year options always works!
- Lock in your increases based on reasonable numbers such as C.P.I. increases with a percentage cap.
- Obtain the right to assign or sub-lease your space and obtain a clause where landlord cannot unreasonably withhold an assignment.
- Be aware of unreasonable Percentage of Sales clauses
- Avoid renewal clauses based on sales levels
- Avoid Assignment Clauses that automatically cancel Options to Renew upon the Sale of the Business
- Do obtain concept exclusive rights if in a Mall or center.
- Do not accept an "Open" option to be negotiated at option time.
- Beware of the "Landlord's Lien" provision. Understand fully before executing lease.
- Do not sign any lease with a "Kickout" clause based on possible future events with the real property.
- Do fully understand the default provision of the lease.
- Do "Flag" landlord notices required to exercise your option. Some Landlords require up to 180 days notice.

#### Commercial Leasing Training Courses

<http://www.lorman.com/teleconference/384573?affiliate=training-classes&discount=&cd=16175%3A0%3A1%3A3%3A6&tcsrc=www.training-classes.com>

<http://www.tdogs.com/?page=agents>

#### Commercial leasing Websites

<http://www.cimls.com/>

[http://www.megadox.com/index.php/document/category/action/browse/frnCategoryID/472/a\\_id/75/](http://www.megadox.com/index.php/document/category/action/browse/frnCategoryID/472/a_id/75/)

[http://www.loopnet.com/xNet/MainSite/User/CustomReg.aspx?regtypeid=340&sourcecode=2ovtgt026k53422&utm\\_source=yahoo&utm\\_medium=ppc&utm\\_term=commercial%2Blease](http://www.loopnet.com/xNet/MainSite/User/CustomReg.aspx?regtypeid=340&sourcecode=2ovtgt026k53422&utm_source=yahoo&utm_medium=ppc&utm_term=commercial%2Blease)

[http://www.smartformz.com/rental-lease-agreement/rental-lease-agreement.php?OVRAW=commercial%20lease%20contract&OVKEY=lease%20contract&OVMTTC=advanced&OVADID=43799734511&OVKWID=41950351011&ysmwa=PiNH DYHR01RYmEYImn3WWAbFPNa4Cd48i1Gkml iQ7PHGuke3uv\\_9U8A4LYdm9ibr](http://www.smartformz.com/rental-lease-agreement/rental-lease-agreement.php?OVRAW=commercial%20lease%20contract&OVKEY=lease%20contract&OVMTTC=advanced&OVADID=43799734511&OVKWID=41950351011&ysmwa=PiNH DYHR01RYmEYImn3WWAbFPNa4Cd48i1Gkml iQ7PHGuke3uv_9U8A4LYdm9ibr)