

Think before you sign

Take the time to understand the language in your lease before you sign it

INTERVIEWED BY MARK SCOTT

Due diligence is a crucial step for any business that seeks to make a smooth transition into newly leased space, says Simon Caplan, SIOR, a partner at Cushman & Wakefield/CRESCO Real Estate.

“When you sign a long-term lease, you are now married and committed to that space and the landlord,” Caplan says.

“You need a strong lease agreement to protect both parties and to ensure that everyone understands how certain responsibilities will be managed. The manner in which this process is conducted can go a long way toward achieving this goal.”

Smart Business spoke with Caplan about subtle, but significant issues you should understand before finalizing your next lease.

What key components are included in most building leases?

The most basic element of the lease is the description of the premises, which should include the size; the location in the building if there are multiple tenants; a description of the common area(s); the amount of parking that you receive for your employees, clients who visit your facility and trucks; and the common area factor of the building, if applicable.

It should also be clear who is responsible for the build-out, or any work that is required to convert the space to fit your needs. Besides rent, other potential add-ons to the lease payments could be real estate taxes, building insurance, common area maintenance and cleaning fees, which all should be laid out.

Make sure that all dates are understood such as lease start, rent start, termination, option notice, payments due, etc. These are all common items to include when leasing space and should not be overlooked.

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 **WEBSITE:** To learn more about what you need to know before you sign a lease, visit www.crescorealestate.com.

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What are some leasing issues that companies commonly forget to address?

One common omission is an adequate description of the condition of the premises that the landlord will be providing for the tenant.

This would include things like new walls, paint, carpet, cleaning, repairs, etc., to differentiate from ‘as-is condition.’

Understand the operating expenses of the property and how they are or may be passed on to the tenant(s). In most leases, the interior maintenance is the responsibility of the tenant while the landlord is responsible for the exterior, structure, roof, parking lot, etc.

Typically the cost of landlord maintenance and repairs are passed through to the tenant, while the landlord is financially responsible for replacement of capital expenses such as a new roof or parking lot.

Sometimes the landlord is permitted to pass through amortized portions of capital expenses.

A good lease provides detail so that both parties understand who is responsible to make what repairs and also who is ultimately responsible to pay for said repairs.

Insure the ability to get and install high-speed Internet, satellite dishes and other high-tech communications systems in the premises and through the common areas, roof, etc.

Understand the damage and destruction clause regarding timing and responsibility if there is a significant fire, flood or other occurrence at the property. The best advice is to include language in the lease that both parties agree to in order to prevent any misunderstandings should the worst occur.

How can you protect against an unresponsive landlord?

If you are constantly having roof leaks and the landlord doesn’t schedule a contractor to fix the leak(s), after a designated period of time, you, the tenant, should be able to call a roofer and have it fixed. The same applies for any other major maintenance or repair issue. A self-help clause gives you the legal ability to potentially apply the cost towards rent or another financial obligation to the landlord. This can only be done if No. 1, the landlord is unresponsive after repeated notifications to address a problem and No. 2, it’s written in the lease that you have the right to do this.

It’s important before you sign your lease that you determine whether your potential landlord is capable of performing all of its obligations. You can be proactive and work with a quality real estate broker who can pass on the experiences of other tenants with different landlords and give you a sense as to whether you might have reason to be concerned before you sign your lease. ●