

“Everything you need to know about your lease”

Small businesses legal rights

The Somerville Community Corporation, Somerville Local First and the Lawyers’ Committee for Civil Rights hosted a workshop with real estate attorney Matthew Lynch, a partner at Nixon Peabody. Below are highlights from that session.

Overall Tips

- As a commercial tenant, it’s important to remember that your landlord is a business person and is looking to make a good investment and a profit.
- As you negotiate or re-negotiate lease terms, think about what the business deal looks like from their perspective to determine the strength of your negotiating position.
- Don’t sign a sublease unless you see the lease and agree to its terms.
- Imagine the worst case scenario. Have an exit strategy if your business doesn’t do well.

Process

- Before drawing up a lease, get a Letter of Intent which states the basic business terms - the rent, security deposit, options to extend, and other terms. This could be a formal letter or an informal email and will provide a foundation to further negotiation.
- Standard commercial leases are written by landlords and therefore favor the landlord. Try to negotiate better terms before signing whatever they give you.
- Have an insurance representative look at the indemnity and waiver provision. You need property insurance, but not for the building itself.
- Real Estate agents get only get paid if there is a deal – keep this in mind as they give you advice and seek opinions from experts who don’t have a stake in the deal.

Negotiating

You may not have a strong negotiating position, but you won’t get anything if you don’t ask.

Try to negotiate for:

- Option to extend, so you can renew when your lease expires. Ideally, this would be an option to extend at market rate – meaning you can have a 3rd party determine an appropriate market rate if needed.
- Assignment rights, so that you can sublease to someone if needed.
- Termination rights, so you can end your lease early if needed.
- Right of first of refusal for adjacent space.
- Equitable repair and maintenance fees and responsibilities.
- Sign as an LLC (Limited Liability Corporation) not as yourself. This means the business is the official lease holder and you sign as an officer. If something goes wrong, this limits your personal liability – the business can go bankrupt, but the landlord can’t come after your personal finances. You may have to agree to higher security deposit or make other concessions to get this but it is an important protection.

- Limitations on the use of your space or surrounding space. See if you can get protections from direct competitors or others.

Re-negotiating a lease

- Don't assume you can stay – not having a backup plan weakens your negotiating position
- Approach your landlord 12 months before the lease is set to expire, and every month thereafter.
- If you haven't signed a lease within 6 months of expiration, look at other spaces. The more potential spaces you have, the more leverage and stability you have.
- If your landlord *doesn't* sign a lease, you can fight to stay there 3 – 6 months: they can't kick you out on the street.

Standard responsibilities for commercial tenants

As a private business deal, a lease can ultimately include anything a landlord can get a tenant to agree to. However, here are some common tenant responsibilities:

- A fee towards maintenance of common areas, which can include property taxes. However, the landlord should generally pay for building equipment: AC, heat and plumbing until it enters your space.
- Utilities. Request backup or invoices from landlord. Consider purchasing your own water meter if it's shared between multiple businesses.
- Repairs and maintenance of your space, but not for the building. Be aware that if a roof problem causes water damage in your space, the landlord could be responsible for fixing the roof but not for fixing the water damage. Read your lease carefully.

Resources

- Lawyers' Committee for Civil Rights: 617-482-1145, www.lawyerscom.org
- Boston Bar Association Lawyer Referral Service at (617) 742 - 0625. They accept many kinds of cases, and work at reduced rates. Interested people should either call or fill in the form at their website. The referral is free. An initial meeting with a lawyer costs up to \$25 for half an hour. <http://www.bostonbarlawyer.org/request-attorney>

This guide was designed by the Somerville Community Corporation and the Lawyers' Committee for Civil Rights, Summer 2011.

