

Pay special attention to the commercial lease

September 16, 2007 – As published in the Naperville Sun

In the excitement of forming a new business, whether a person is purchasing a franchise or forming a new business from scratch, one critical step in getting the business started usually gets little attention by the business owner - the commercial lease.

With everything else new business owners have to decide, they tend to spend too little time understanding the commercial lease.

Before business owners sign any commercial lease, they must read it and know what it means. This seems like common sense, but many people start reading the lease - normally a substantial number of pages with a bit of "legalese" - and then stop, assuming the lease conforms to what they were told by the leasing agent.



*Denice Gierach, owner and founder
of The Gierach Law Firm*

If you cannot understand the lease, spend the money to hire an experienced lawyer who can tell you what the terms of the lease mean.

Although there is an upfront cost to using a lawyer for this, it is essential that you are aware of your rights and duties under the lease and that the lease incorporate the verbal promises made by the leasing agent.

If it is not in writing, you will not be able to enforce the promises made to you by the leasing agent.

There are a number of provisions that you should be aware of.

- Know your total cost. In many commercial leases, the tenant pays a base rent amount per month, plus a portion of taxes, insurance and maintenance of the building and its common areas.

In a shopping center lease or in a lease to a restaurant, there may be additional payments required that are a percentage of the tenant's gross sales.

- Know the building. You should know how old the building is and when major repairs to heating and cooling systems, the roof and common areas were last completed. Otherwise, you may be surprised by a bill for your share of work on these items.

- Know who's responsible. The tenant named in the lease should be your business entity, which is the party responsible for making the lease payments.

As a newly formed business with no track record, the landlord may ask you to personally guarantee the lease.

This means that if the business fails, the landlord will expect you to pay the lease for the rest of its term, which could be a substantial amount of money.

Your lawyer might be able to help negotiate better terms than a personal guarantee, especially if you have owned a business in the past.

- Know your neighbors. If the property you want to lease is in a mall or a shopping center, you may be concerned about whether the landlord rents space to a competitor.

If your business requires peace and quiet, you may need to bolster the provision allowing for your "quiet enjoyment" of your leased space, to allow you to terminate the lease if the landlord rents to a noisy neighbor.

- Know your financing. If you are a franchisee, you should not sign a lease if you have not finished your financing, bought your franchise or finished the purchase of your new business.

There is no fun in making lease payments for a business you don't have.

If the landlord insists you sign the lease, your lawyer will need to insist on language that includes a contingency for financing and a contingency for the completion of the business or franchise purchase.

Denice Gierach is a lawyer and owner of The Gierach Law Firm in Naperville. She is a certified public accountant and has a master's degree in management. She may be reached at deniceg@gierachlawfirm.com or 630-756-1160.