



# LEGAL ASSISTANCE TO MICROENTERPRISES PROJECT (LAMP)

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## Lessees, Lessors, and Life Lessons Commercial Lease Issues for Small Businesses

By: Andrea Beleno

### 1. What is a lease - when would I need one?

A lease is contract between you and your landlord. Anytime you pay rent to a landlord for a space where you can run your business, you should have a **written** lease.

A lease agreement can be short term or long term; and it can be written or oral. But, a lease for more than a year must be in writing to be legally enforceable. Sometimes written leases talk about a "lessor" and a "lessee." The lessor is the landlord and the lessee is the tenant.

### 2. What should I look for in a commercial lease?

A written commercial lease should identify the landlord; make sure that the landlord actually owns the property you are leasing, or has the authority to sign the lease for the owner of the property! The lease should also identify you as the tenant. If your business is organized as a corporation, or LLC or partnership, you should sign the lease on behalf of the business entity, instead of as an individual.

The lease should clearly state the starting date and ending date of the lease and the term, or length, of the lease. As a tenant, you will be responsible for the entire rent due for the full term of the lease, even if you move out or go out of business. Leases usually state the rental amount on a monthly basis and indicate when payment is due. Look to see how the rent is calculated! Some leases require you to pay a portion of your profits as additional rent.

You need to be able to identify the space you will be leasing from the face of the lease. If you are leasing an entire building, it should be identified by a legal description of the property. If you are leasing part of a building, a survey, map or drawing, (especially in a strip center or place that has movable walls), should be attached to the lease, and the lease should specifically state how many square feet you are leasing.

Check to see what limits the lease places on your use of the space; landlord restrictions on the type of use are generally enforceable. If the lease says nothing about the use of space, you can use it for any lawful purpose. No lease or landlord can give you the right to use the space for something that is prohibited under the zoning laws. Check with your local building/zoning department before signing the lease!

### 3. Who should sign the lease?

Make sure that the person, partnership or corporation named as landlord is the owner of the property. If you have any doubts ask to see a deed or title insurance policy to verify that the named landlord really owns the building. If the building is owned by an individual, that person or an authorized person should sign the lease. If the building is owned by a business entity, make sure that the person signing the lease has the authority to sign for the entity.

If you are dealing with a rental agent who will be negotiating the lease and signing it on behalf of the owner, ask for written confirmation from the owner that the agent has the authority to sign the lease.

Before you sign the lease as an individual or as a partner, be aware that you will be personally liable for rent if your business runs into financial problems. If you sign a personal guarantee, you make yourself personally responsible for the debt, and your personal assets can be at risk.

### 4. Can I negotiate the terms of the lease?

Typically you will be presented with a preprinted lease prepared by the landlord or landlord's attorney. Because these terms typically favor the landlord, consider it the starting point for negotiations. You want to have two goals, to have a favorable lease and a good long-term relationship with your landlord.

To eliminate a proposed lease's one sidedness, ask for equal treatment for you and the landlord. If the lease requires you to cure a default within 10 days, ask for the same requirement for landlord defaults. If you are required to pay your landlord's attorney fees in enforcing the lease, ask that your landlord do the same for you.

Some other issues you may want to negotiate and include in your written lease:

- what landlord services that are part of lease agreement;
- the terms of landlord's right to enter your space;
- what types of signs you are allowed to put up;
- the terms and hours of your access to common areas of the building;
- who will pay, and in what proportion, for expenses (utilities, telephone, computer, internet, insurance, taxes, maintenance, repairs, cleaning, garbage, security, etc.)

Make sure you agree with the terms covering who pays real estate taxes and utilities; who is responsible for building maintenance, maintenance of your space, repair of plumbing, electrical, mechanical systems, janitorial services, window washing, trash removal,

landscape care, and parking lot maintenance; any option to purchase the building; and circumstances where rent could be withheld, etc. Do not sign a lease contract unless you agree to *all* the terms in it!

Check the section of the lease that governs subletting. Subletting is when you find someone else to take over your lease; this always requires the written consent of the landlord. Even if you sublet, you will remain responsible for compliance with the lease. Subleasing rights should be spelled out in lease, ask that the landlord agree not to unreasonably withhold consent to sublease.

5. What if I have a problem with my landlord?

If you have a dispute with your landlord, first look carefully at your lease; it may contain a clause that governs how the dispute should be resolved. Be sure to document your dispute! Put all complaints in writing, and deliver them to the landlord in person or by certified mail, return receipt requested. Always keep a copy of your letters for yourself.

Under Texas law, the landlord may not cut off your utilities or remove your property from the leased space unless it is for repairs or in an emergency. A commercial landlord may lockout the tenant to make repairs to the property, for abandonment of the property, or for nonpayment of rent. If a lockout occurs, the landlord must leave notice where you may obtain the key during regular business hours. If the landlord does not comply with the law, you can get a court order to get back into your space, and the landlord may have to pay penalties for breaking the law.

A security deposit is not a substitute for rent. The landlord must refund the security deposit by 60th day after date you surrender the premises and provide notice to the landlord of the tenant's forwarding address. The landlord may deduct expenses for damages that you cause, from the security deposit, but not for normal "wear and tear". If deductions are made, the landlord must account for them with an "itemized list" within 60 days. If the landlord does not comply with the law, you can get a court order to get back your deposit, and the landlord may have to pay penalties for breaking the law.

**Legal Assistance to Micro-enterprises Project (LAMP) provides free legal services for qualified low-income residents of the Texas RioGrande Legal Aid service area to start up or sustain a small business. LAMP provides useful legal advice and assistance on the laws that may affect proposed and existing businesses, including: formation, contracts, employment issues, tax, health and safety laws, commercial landlord/tenant leases, and lending laws. To complete an application, call toll-free: 1-888-988-9996 or 1-800-369-9270.**

**ADDITIONAL RESOURCES:**

**Texas Property Code Title 8, Chapter 93**

**Commercial Tenancies: Landlord-Tenant**

**online: <http://www.capitol.state.tx.us/statutes/pr.toc.htm>**