

## **COMMERCIAL LEASES FOR ENTREPRENEURS**

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Many business owners lease commercial space rather than own the property their business occupies. Due to the long term nature of the lease obligation, the terms negotiated on the commercial lease can have a major impact on the success of the business and the business owner.

Here are four important points to consider when leasing commercial space:

### 1. Letters of Intent.

Landlords and their commercial real estate brokers frequently will present the prospective tenant with a lease proposal or letter of intent that summarizes the major terms of the lease in bullet points. The prospective tenant should have their attorney review the letter of intent before signing it. Once the letter of intent is signed it becomes more difficult to negotiate or add more favorable terms for the tenant in the subsequent lease. Not impossible, but more difficult.

### 2. Heating, Ventilation & Air Conditioning ("HVAC").

Of all the mechanical systems on leased premises, HVAC is perhaps the most important in light of the likelihood of a malfunction and the potential crippling effect on the business when and if a malfunction occurs. Tenants should pay particular attention to the lease provisions regarding HVAC and the relative obligations of the landlord and the tenant with regard to its maintenance, repair and replacement. Tenants should find out prior to signing a lease the age and condition of the existing HVAC system and its maintenance history, and talk with the HVAC company that has performed maintenance on the system.

### 3. Environmental Representations, Warranties and Indemnities.

The commercial lease proposed by the landlord typically will contain a provision prohibiting the tenant from using environmentally hazardous materials on the leased premises and indemnifying the landlord against any costs arising from the tenant's environmental contamination of the premises. Tenants need to negotiate into the lease representations and warranties by the landlord as to the condition of the premises at the time of the lease and indemnification of the tenant by the landlord against any costs to tenant arising from environmental contamination of the premises by the landlord or prior tenants.

### 4. Recording a Memorandum of Lease.

North Carolina General Statutes §47-18 (a)(iv) provides that no lease of land for more than three years is valid against lien creditors or purchasers of the leased property except from the time the lease is registered in the county where the land lies. This means that a purchaser of real estate does not have to respect pre-existing leases of the property over three years in duration unless the purchaser has formal notice of the existence of the lease. Consequently tenants should file a Memorandum of Lease to protect their interest and make sure the lease itself requires the landlord to cooperate in the execution and filing of the Memorandum.

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