

The Legal Strategist

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TEXAS ESOTERIC FACTS

- El Paso is closer to Needles, California than it is to Dallas.
- Texas includes 267,339 square miles, or 7.4% of the nation's total area.
- More land is farmed in Texas than in any other state.

As a business owner, leasing commercial space is a big responsibility, especially since there are fewer consumer protection laws than residential leases. What you and your landlord include in your lease governs the landlord and tenant responsibilities. For this reason, it is crucial that you carefully negotiate your commercial lease agreement and determine the responsibilities for each party, so that when a dispute arises, there will be no confusion or increased potential for litigation.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of our web site, please contact our office *Scott Barrett*

FEATURE TOPIC: **The Importance of Commercial Lease Reviews**

Business owners often hire me to review their proposed commercial leases. The first question I receive is often, "How much will this cost" followed by a statement such as, "I just want a quick review to see if it's fair." Unfortunately, a "quick review" is impossible. Most of these leases contain over 30 pages in the smallest possible font and another ten pages of addenda. Often some research will be required. Of course, money is often an issue with many businesses, however, skipping the lease review and signing what the landlord puts in front of you is pound-foolish. For many businesses the lease rent over time will add up to the single most expensive investment in the business.

A commercial lease includes many separate agreements which, taken alone, are complex in and of themselves. For example, commercial leases usually include a construction contract, a security agreement, a subordination agreement, a release and indemnification agreement, and sometimes includes restrictive covenants, rights of first refusal and other agreements. As one can see, each of these agreements alone could be the subject of extensive negotiation. In a lease, these agreements are mixed in with other difficult issues such as operating expense pass-throughs, landlord services, assignment and subletting, repair and maintenance of the premises, insurance, default and remedies, and other typical lease provisions.

In spite of the complexity of commercial leases, many clients tend to think of a lease as a rather simple, "standard" document. Often clients do not consult an attorney before signing a landlord's lease form. It is only later, when a problem arises, that an attorney is consulted. Clients are often shocked to find they have signed a landlord form lease which essentially provides (1) that the tenant can occupy the space if the rent is paid (unless the landlord wants the space back for another tenant); (2) that the landlord will try to provide utilities and other services to the premises, but if the landlord fails to do so, the tenant waives all claims against the landlord, waives any right to vacate the space; and (3) that if for some reason the tenant can find an unreleased claim against the landlord, that claim can be satisfied only out of the landlord's interest in the building (which is usually heavily mortgaged). The tenant on the other hand is fully liable, has pledged all its personal property to secure its obligations, and the principal shareholder of the tenant has probably personally guaranteed the lease. Thus, the lease is effectively nonrecourse to the landlord, but full recourse and secured as to the tenant. Obviously, the tenant will find itself in a rather difficult bargaining position in its dispute with the landlord.

If you would like more information on commercial lease reviews, please contact [Scott Barrett](#) to set up a consultation.

ISSUE	REMEDY
Build-out of premises	Provide deadline and time for punch list work
Pass through of expenses	Exclude capital improvements and allow for audit
Failure of essential services	Provide for rental abatement and possible cancellation right
Restoration following casualty	Provide for reasonable time limit
Indemnities and releases	Provide for cross indemnity for third party claims and mutual releases for claims by parties
Lack of notice of default	Provide for notice and opportunity to cure
Landlord's lien	Provide for subordination to third party lenders
Prohibition on assignment and subletting	Provide for exceptions for related parties and sale of business
Compliance with laws	Limit tenant's obligations to premises and exclude capital improvements
Relocation clauses	Delete if possible or cover all expenses and require comparable space and location