Evan Allison's Article About Key Commercial Lease Provisions Published in Edge Magazine

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Miller & Martin commercial real estate attorney Evan Allison recently authored an article titled "Five Provisions to Carefully Negotiate as a Tenant in a Commercial Lease" for the August 2025 issue of EDGE Magazine (page 25). The article highlights five important terms in a commercial lease for a tenant to keep in mind when negotiating a lease as well as potential repercussions of neglecting these terms.

Evan Allison is a commercial real estate attorney and partner at Miller & Martin PLLC. He represents real estate developers, investors, landlords, tenants and lenders in all types of commercial real estate transactions. Recognized in Best Lawyers for real estate law, his experience includes the development of multi-family projects, the acquisition, development, and management of medical office buildings, industrial building leases, and restaurant leases.

Click here to read the full featured article, "5 Provisions to Carefully Negotiate as a Tenant in a Commercial Lease," on pages 25 in *Edge* magazine.



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5 Provisions To Carefully Negotiate As A Tenant In A Commercial Lease

Lease agreements define the relationship between landlords and tenants. Whether you are a savvy business owner or a first-time tenant, a thoughtfully negotiated lease agreement is crucial to avoid negative impacts on your business. Overly landlord-friendly provisions may lead to significant financial and legal consequences. Below are important terms in a commercial lease for a tenant to keep in mind when negotiating a lease as well as potential repercussions of neglecting these terms.

1. **Assignment and Subleasing Prohibitions**
Landlords often require approval rights over the assignment of the lease or subletting of the premises by the tenant. Strict requirements for the landlord's approval of assignments or subletting may put the tenant in a difficult position when it comes to the sale of a business. Therefore, as a business owner, it is in your best interest to have broad rights to assign or sublease. For example, tenants should seek to avoid agreeing that a change in control of the entity signing the lease or sale of the tenant, or its assets constitutes an assignment requiring the landlord's consent. Additionally, tenants should strive for the right to enter into subleases as long as the tenant remains liable under the lease and the use of the premises complies with the terms of the lease.

2. **Broad Common Area Maintenance Expenses**
Tenants should not agree to extremely broad provisions regarding operating expenses passed through to the tenant in a multi-tenant building. The lease should clearly define what is and what is not included in operating expenses. Failure to adequately define what costs are to be paid by a tenant may result in a business owner being liable for significant expenses for which it has not budgeted. Unclear operating expense provisions may also lead to landlord/tenant disputes over what is or is not included. Moreover, the tenant should also request a cap on increases in "controllable" common area maintenance charges (costs other than taxes, insurance, utilities and similar items outside landlord's reasonable control). Clarity on this issue can save significant time and money in the long run.

3. **Landlord Approval for Alterations**
Requiring the landlord's consent for major alterations to the structure, exterior, roof or other similar portions of the premises is typical. However, a tenant should not agree that all alterations must be approved by the landlord. Minor interior alterations such as painting and carpet replacement or other items not involving significant expense should be allowed. Tenants should be permitted to operate their business in the ordinary course and not be hampered with onerous lease provisions regarding alterations.

4. **No Notice and Cure Periods for Defaults**
To avoid a quick termination of a lease and potential penalties, a fair lease should require a landlord to provide written notice to a tenant in the event of a default by the tenant and allow the tenant a reasonable amount of time to cure the default (a minimum of 30 days for a non-monetary default and at least 3 business days for monetary defaults). However, it is reasonable for a landlord to limit the number of notices it must give a tenant for monetary defaults to prevent the tenant from being habitually late in the payment of rent. Without notice of a default, a tenant may find itself in a difficult situation or even a dispute with the landlord over whether a default actually exists. Receiving reasonable notice will give the tenant time to cure the default or, in a practical application, reach out to the landlord to discuss the alleged default.

5. **Vague Tenant Improvement Allowance Terms**
Lease provisions regarding a tenant improvement allowance provided by a landlord to a tenant for improvements to the premises must be clear and unambiguous. Will the allowance be paid (i) prior to the commencement of any work, allowing the tenant to use the funds to pay costs as they are incurred, (ii) in multiple draws as portions of the work is completed, or (iii) once all work is completed? If the allowance is not provided up front, the tenant must ensure it has sufficient funds to complete all work before receiving the allowance from the landlord. Additionally, the tenant should pay careful attention to what items must be submitted before the allowance is paid, such as lien waivers, receipts, a certificate of occupancy, or architect certification. A well drafted lease provision will help the tenant avoid any unexpected surprises relating to landlord contributions for tenant work.

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AUGUST 2025 | EDGE 25