

Commercial Leasing Guide for Small Business and Nonprofit Tenants in Philadelphia

Prepared by: Saul Ewing LLP¹ (Levy/Bordoni-Cowley/Heinl/Brinker)

¹ Principally prepared by Kevin M. Levy, Krystal Bordoni-Cowley, Jack Brinker, and Mandee Heinl.

INTRODUCTION

Welcome to the Commercial Leasing Guide for Small Business and Nonprofit Tenants in Philadelphia. Whether you are a budding entrepreneur, a seasoned small business owner, or a leader of a nonprofit organization, securing the right commercial space is a critical step in achieving your goals. This guide is designed to help you navigate the complexities of commercial leasing in the City of Philadelphia, offering insights into the legal considerations you may encounter.

Our goal is to provide you with valuable information to empower your decision-making process. From understanding the terms of a lease to recognizing potential pitfalls, this guide is an educational resource to help you approach leasing negotiations with confidence and clarity.

Please note, however, that this guide is intended solely for educational purposes. It does not constitute legal advice. Every leasing situation is unique, and we strongly recommend that you consult with a qualified attorney to address your specific circumstances and ensure that your rights and interests are fully protected.

The first portion of this guide contains information related to forming a legal entity and working to make sure that your business can operate in the space you've identified, while the second portion of this guide provides some explanation for common and important terms appearing in commercial leases.

If after reviewing this resource guide, you would like to discuss in greater depth with a pro bono attorney through VIP, please submit an application [here](#).

Thank you for choosing this guide as a resource in your commercial leasing journey. We wish you success as you contribute to Philadelphia's vibrant community.

TABLE OF CONTENTS

1. City of Philadelphia Commercial Tenant Bill of Rights.	1
2. Obtaining a Zoning (Use) Permit & Researching Zoning Districts.	1
3. Who is the Right Tenant (Entity vs. Personal)?	2
4.. Leasing Terms.....	2
a. Permitted Uses.....	3
b. Assignments.....	3
c. Subleases.....	3
d. Extension Rights & Options.	4
e. Security Deposits.	4
f. Landlord Entry Rights.....	5
g. Signage Rights.	5
h. Operating Expenses/Common Area Maintenance (CAM).....	5
i. Surrender.....	6
j. Holdover.	6
k. Insurance.	7
l. Force Majeure (Excusable Delay).....	7
m. Relocation Rights.....	7
n. Quiet Enjoyment.....	8
o. Lease Guaranties.	8
p. Confession of Judgment.	9

1. **City of Philadelphia Commercial Tenant Bill of Rights.**

As of March 18, 2022, commercial tenants must be given the opportunity to determine the zoning and approved uses for a commercial property before entering into a lease. Landlords must give tenants written notice on how to determine the zoning and approved uses of the leased space and an acknowledgement form signed by both parties, indicating that the tenant received the requisite written notice. This law provides tenants with rights against any landlord that fails to provide the required zoning information.

This law protects commercial tenants by requiring that property owners provide potential tenants with a City-issued guidebook containing zoning information at the time the lease terms are presented. Additionally, the legislation requires that landlords give prospective tenants a minimum 7-day due diligence period to review the zoning information prior to a lease being signed. Unless covered by an exemption, these requirements would apply to all new commercial leases negotiated after the effective date of the legislation.

The City-issued guidebook is accessible [here](#). This guidebook covers several items including:

- Describing where tenants can obtain current and accurate zoning information about the property;
- Providing contact information for the City's Commerce Department, as well as legal and language-access assistance to obtain clarity on applicable zoning regulations;
- Including two copies of an acknowledgment form to be signed by the property owner and prospective tenant as confirmation that the guidebook has been provided and that the tenant has been informed of their right to a minimum 7-day due diligence period to review the property's zoning information. Each party should retain an original copy of a signed acknowledgement form.

Tenants now have the ability to sue property owners who fail to provide the guidebook and the minimum 7-day due diligence period, and to seek restitution for financial losses suffered as a result of not having the necessary zoning information prior to signing the lease.

2. **Obtaining a Zoning (Use) Permit & Researching Zoning Districts.**

Congratulations! You've found a location to operate your small business or non-profit. You've found a potential landlord to provide space. *Don't sign the lease just yet – because even if your business is legal to operate, you might not be able to operate in this location!*

Philadelphia's Zoning Code governs what and where various businesses can operate. From construction and development to opening a new business, or establishing a housing rental, an owner and tenants must comply with the Zoning Code, which requires a zoning or use permit.

Some zoning or use permits are acquired "by right", meaning the proposed use is permitted at that particular property by the code. When use is permitted by right, a

permit must be obtained, through the Philadelphia Department of Licenses & Inspections (also known as L&I).

In other cases, a permit may not be considered by right, and will require special approval from the Philadelphia Zoning Board. A special approval can occur in different forms, such as a special exception or variance, and require further engagement with the City of Philadelphia (City). *Obtaining a zoning variance can be an expensive and lengthy process that requires ongoing representation from an attorney.*

The first step is to visit the City's website, [Atlas](#). Enter the property address in the search tool, review existing permits and determine whether a new permit is required.

A few Zoning permit takeaways:

- Zoning permits run with the property, so a change in the owner or tenant does not necessarily mean a new permit is required;
- Depending on the type of permit (construction, use etc.), the permit has different expiration dates; and
- To determine if the proposed use is permitted, after confirming zoning on Atlas, check the permitted uses in that zone [here](#).

3. Who is the Right Tenant (Entity vs. Personal)?

Under a lease, the person who owns the property is the “landlord” or the “lessor”, and the person renting the property is the “tenant” or the “lessee”. When an individual contracts directly with landlord and signs the lease personally (in other words, the tenant named in the lease is a human), the individual holds themselves and their personal assets out for responsibility under the lease.

While you may not intend to have issues with your lease obligations, circumstances outside of your control may present themselves and open yourself up to legal risk. Business owners should feel comfortable pursuing their business opportunities without risking their personal assets, which is why a business or non-profit should consider entering into the lease contracting under a legal entity.

When a business enters into a lease as an entity such as a corporation or a limited liability company (LLC), the landlord is typically only permitted to pursue that entity's assets in the event of a default or financial obligation owed by the tenant to the landlord under the lease. This legal separation allows businesses and non-profits to enter into commercial leases without fear of losing its owner's or operator's personal savings. While there are some costs associated with forming an entity, these costs are well worth the legal protections from personal liability the entity offers. For more information about how to obtain an EIN, Commercial Activity License, and to incorporate as a Limited Liability Company, click [here](#).

4. Leasing Terms.

In most residential cases, tenants sign whatever lease document their landlord puts in front of them—they tend not to be very negotiable. But most residential leases are typically only for small residential spaces with terms of one, or maybe two years. Rent amounts are typically smaller, and the stakes are smaller. But in commercial leases, terms are typically longer, the spaces are usually larger, and the stakes can be much

higher (with more users than just the person who falls asleep there at night—employees, volunteers, customers, clients, and more can be expected to visit into a commercial space). This Section discusses important parts of a commercial lease.

a. Permitted Uses.

A permitted use provision defines what a tenant can and more importantly cannot use the space for. The permitted use provision determines how tenants may operate the business. This seemingly simple clause is one of the most important non-economic provisions in a commercial lease.

As a tenant, you would like to use your rental space for any business need that presents itself. Business needs can change over time as your business evolves, so you want the permitted use provision to be as broad as the landlord will allow.

While a tenant may include a catch-all provision allowing for their anticipated business use and “any other use permitted by law”, many landlords will try to restrict the permitted use. If a landlord wants to restrict the permitted use to the purposes defined in the lease, a tenant may compromise to its intended use in addition to “other related services” or require landlord’s consent not to be unreasonably withheld for any additional permitted uses outside the scope of the original defined permitted use.

b. Assignments.

An assignment of a lease allows a tenant to transfer their rights and interest in the lease to a third party (someone else) for the rest of the lease term. Through an assignment, tenants transfer their rights and relationship with the landlord and the right to occupy the premises. Assignment rights offer tenants flexibility for any change in circumstances such as needing to relocate to a more suitable premises. Assignments are useful when selling your business where the buyer wants to take over the actual business, instead of just buying all of the assets and inventory of the business.

A commercial lease defines whether and potentially who tenants may assign their rights in the lease to. As a tenant, you would like the general ability to assign the lease with little to no restrictions on the transfer. Some common restrictions may include:

- No assignment rights permitted at all;
- Assignments are limited only to the tenant’s family members, affiliates, subsidiaries, or related entities;
- Tenants must give their landlord notice and receive consent for assignment which might (or might not) be given;
- Tenants must pay for all costs incurred by landlord in relation to the assignment request (normally limited to a certain amount);
- Absolute prohibitions if the tenant is in default under the lease.

c. Sbleases.

A Sblease acts as an independent lease with the tenant acting as a (sub)landlord to another tenant for the premises, or maybe only a portion of it. A sblease does

not transfer the contractual obligations between the landlord and the tenant, so there is no contractual relationship between the original landlord and the subtenant. The original tenant remains responsible for all obligations under the lease. A sublease offers the original tenant more flexibility and control in allowing third parties to come into their space. Unlike an assignment which gives a third party whatever is left is their lease term, a sublease may be for a portion of the lease term or part of the premises. However, this added flexibility comes at the cost of increased liability. The original tenant remains responsible to their landlord for any defaults or damages the subtenant may create, and the tenant must balance two relationships (the landlord and the original tenant, and the original tenant and the subtenant).

Like assignment rights, a commercial lease defines whether a tenant may sublease their premises at all, and who might be eligible to be a subtenant. As a tenant, you would like the general ability to sublease with little to no restrictions on the transfer. Some common restrictions may include:

- No rights to sublease permitted at all;
- Any possible subleases are limited only to the tenant's family members, affiliates, subsidiaries, or related entities;
- Tenants must give their landlord notice and receive consent for any subleases which might (or might not) be given;
- Tenants must pay for all costs incurred by landlord in relation to the sublease request (normally limited to a certain amount);
- Absolute prohibitions if the tenant is in default under the lease.

d. Extension Rights & Options.

In some leases, both the landlord and the tenant want certain levels of certainty when it comes to what happens after the original lease term expires. In those cases, the parties might negotiate a right or an option to extend the lease. Typically, lease extension rights allow tenants to simply tell the landlord that they will be exercising their extension option, and once they provide that notice, the lease automatically renews for a set period of time and the rent is known ahead of times. In other cases, it might be that the landlord then has to tell the tenant what the terms for the lease renewal will be, and the tenant needs to make a decision at that point.

Except for rent and the time left in the term, most original terms typically remain the same unless specifically renegotiated between the tenant and the landlord. All alterations to the terms require the tenant's consent, with both parties signing the lease extension to accept the extension formally.

e. Security Deposits.

A security deposit is money that belongs to a tenant but is held by their landlord for protection against actual damages or unpaid rent. The security deposit amount and conditions for its return should be detailed in the lease. Most often, a commercial landlord will require a tenant to provide at least two years' worth of prior financials, typically as tax returns or bank statements to help determine how much a security deposit should be.

Pennsylvania does not restrict the amount a commercial landlord may require as a security deposit and has no regulations or requirements governing the return of commercial security deposits, but most security deposits in a commercial lease context is one or two months' worth of rent. In Pennsylvania, there is no requirement that a landlord separate security deposit money from other money in a landlord's bank account, and typically tenants are not entitled to any interest from a security deposit unless the lease says so. Security deposits are not intended to pay for repairs that are "ordinary wear and tear", so it is okay to have a conversation with a landlord (or a former landlord) who attempts to use the security deposit to pay for repainting, or anything that might be considered an improvement to the space.

f. Landlord Entry Rights.

Even though a landlord might be the owner of a property, once the landlord signs a lease, they give over possession and the sole right to be in the space to the tenant. Commercial leases typically provide landlords limited rights to enter and inspect a leased property, and usually require that a landlord provide some advance notice except in the event of an emergency. In cases of emergency and where immediate repairs are needed, landlords may enter the property to stop any continuously occurring damage.

g. Signage Rights.

Signage rights are a negotiable term in a lease agreement, with signage terms typically including at whose cost, location, coloring, lighting, and size. Unless signage rights and contingencies are provided explicitly in the lease, a landlord may require you to move or remove your sign. Landlords (and local municipalities) sometimes require signage preapproval rights, that obligate tenant to obtain approval for a proposed sign and may require tenant to submit specs or architectural drawings. Posting signage on the exterior of a building in Philadelphia requires a zoning/use permit, so there are other considerations than just working with the landlord.

h. Operating Expenses/Common Area Maintenance (CAM).

In many residential leases, tenants pay their rent to their landlord, and probably pay their own utility bills. In many commercial leasing arrangements, tenants only pay once to their landlord, and their bill might include something called base (or fixed) rent, and common area maintenance (or operating expenses/costs). Common area maintenance charges, or CAM, typically requires a commercial tenant to pay its proportionate share of the landlord's costs to operate and maintain the common areas of the building, and pay for the real estate taxes against the building, among other things.

- **Proportionate Share:** The proportionate share, or tenant's pro rata share, is essentially the tenant's portion of the building and is calculated by taking the building's rentable square footage and dividing it by tenant's rentable square footage in the leased space. When the tenant is responsible for paying its proportionate share of landlord's costs for the building, such as operating expenses and real estate taxes, tenant pays this percentage amount.

- **CAM Clause:** Landlords and tenants usually heavily negotiate the definition of CAM costs and what may be passed through by the landlord for the tenant to pay. As such, the definition of CAM costs vary greatly from lease to lease. Generally, landlords want to define CAM as broadly as possible, while tenants will want to define CAM narrowly. Operating expenses typically include: (a) property taxes; (b) insurance premiums; (c) utility costs; (d) common area maintenance expenses; (e) maintenance and repair costs; (f) snow removal; (g) janitorial services; (h) pest control; (i) advertising; (j) heating, ventilation, and air conditioning (HVAC); and (k) water or sewer expenses.

i. Surrender.

The surrender of possession provision generally outlines a tenant's obligation to restore the leased space to a negotiated condition once the lease expires or is terminated (typically this requires the tenant to leave the space in "broom clean" condition and in as good of shape as it was at the start of the lease). The surrender provision typically describes a tenant's liability for wear and tear and/or damage done to the premises during the term of the lease. In most cases, tenant is required to:

- Leave the premises in the same condition as it was in on the first day the lease began, except ordinary wear and tear;
- Remove furnishings and trade fixtures;
- Fix any damage caused when removing computer and telephone wiring;
- Clear and repair any alterations (unless the parties agreed otherwise) made during the term of the lease;
- Remove any exterior signage;
- Clear the premises of all inventory, equipment, furniture, supplies, wall decorations, trade fixtures, and personal property; and
- Patch, refinish, or repair any significant damage to the building.

If the tenant does not comply with the requested removals and repairs including in the surrender provision, the landlord usually has the right to complete the removal and repairs at the tenant's expense, and can use the tenant's security deposit to pay for those costs. Therefore, tenant should be sure to follow through on any of the items outlined in the surrender provision.

j. Holdover.

In some leases, a holdover provision is wrapped up in the surrender provision, in others, holdover may be its own provision. Holdover occurs if the tenant does not leave the premises on time at the termination or expiration of the lease. Generally, a holdover will not extend or renew the lease, but allows the tenant to stay on the property (until told to leave), so long as the tenant pays increased rent, normally equal to 150% (1.5x) or 200% (2x) of the original rent. Tenants don't have a right to holdover, though, and a landlord can typically provide a notice to quit at any time to require the tenant to leave within a certain amount of time after their lease expires.

k. Insurance.

Many leases require the tenant to maintain certain levels of insurance coverage for things like property insurance, commercial general liability (CGL), and automobile or workers' compensation insurance. Commercial general liability coverage is a standard insurance offering coverage against liability claims for bodily injury and property damage arising at the leased premises. Tenants should work with their insurance providers to understand what, exactly, the insurance covers. In general:

- Basic form property insurance typically provides coverage against losses arising from fire, lightning, explosion, smoke, windstorm, hail, riot, civil commotion, aircraft, vehicles, vandalism, and sprinkler leakage;
- Broad form property insurance typically provides coverage for losses arising from falling objects, weight of snow, ice or sleet, water damage (from leaking appliances) and collapse from named causes; and
- Special form coverage (or, "all risk" coverage) offers expanded coverage whereby the insured must only prove that a loss was not excluded, and not that a specific peril occurred. Special form coverage generally excludes losses arising from boiler and machinery, earthquakes and flooding.

Typical limits for many retail and office tenants range between \$500,000 and \$5 million. Excess and umbrella liability coverage generally insure losses beyond the limits of underlying liability insurance policies.

l. Force Majeure (Excusable Delay).

Force majeure clauses generally excuse, or temporarily delay, certain landlord or tenant lease obligations due to unforeseen circumstances beyond the parties' control. Force majeure provisions often enumerate a list of specific events that excuse or delay performance under the contract, including acts of God (which may include extraordinary floods, storms of unusual violence, sudden tempests, severe frosts, great droughts, lightnings, earthquakes, sudden deaths and illnesses), natural disasters, terrorist activities, governmental actions or restrictions, labor strikes, acts of war, and an inability to obtain services, labor, or materials, etc.

Notably, most leases provide that the occurrence of a force majeure event will not excuse payment of rent. This means even when a force majeure event has occurred, the tenant must still pay rent, even if the tenant cannot use the space at the moment.

m. Relocation Rights.

Landlords like to maintain as much control over their buildings as possible. A relocation rights provision helps maintain a landlord's control by permitting the landlord to relocate (literally move) the tenant to another space.

Landlords may want to relocate tenants if they have a more desirable prospective tenant interested in the occupied space, another tenant wants to expand their space, or landlord wants to redesign and pursue a building construction project. Whatever the reason, a broad relocation right can uproot a tenant's business.

Tenants should be wary of relocation right provisions. If landlord includes a relocation right, tenant should consider limitations to the relocation right including:

- Mandatory notice to tenant;
- Relocation to another space with the same, similar, or larger location and size without increase in base rent and other sums due under the lease;
- The ability to terminate the lease upon relocation;
- No relocation in the first several number of years of the lease;
- Limits on the amount of times a landlord might relocate the tenant.

n. Quiet Enjoyment.

Quiet enjoyment refers to a tenant's right to use and occupy the premises without interference from a landlord. Pennsylvania courts imply a covenant of quiet enjoyment in every lease of real property, so every tenant retains this right even if the lease does not mention it. However, the implied covenant may be limited by the terms of the lease. Most commercial lease agreements include covenant of quiet enjoyment that is conditioned on the tenant complying with all its obligations under the lease.

Landlords can breach the covenant of quiet enjoyment when the landlord's actions substantially impair tenant's ability to use the premises or substantially decrease the utility of the premises. A few examples of landlord's breach of quiet enjoyment include: (1) failing to deliver possession of the premises to tenant at the start of the lease; (2) locking the premises and denying tenant access; and (3) neglecting the premises over several years, resulting in structural deterioration, deficient lighting, and water and sewer leaks.

In Pennsylvania, unlike in residential leases, there is no implied warranty of habitability in a commercial lease. An implied warranty of habitability requires landlords to maintain the premises in compliance with local housing code, and allows the tenant to withhold rent if the premises is not "habitable". Because this right is not given in commercial leases, any withholding of rent because the premises is not "habitable" will likely result in a tenant default under the lease. A commercial tenant is limited to remedies due to a breach of the right to quiet enjoyment. When landlord breaches the covenant of quiet enjoyment, Pennsylvania law allows tenants to pursue the following remedies: (1) claim that they have effectively been evicted from the leased space because conditions have become so awful and unsuitable so as to prevent the tenant from using the space (referred to in law as constructive eviction); (2) withhold all or partial rent (this is an EXTREME measure that should not be taken lightly); (3) fix the problem themselves and withhold the amount of money that it took to fix the problem from rent (sometimes called "self-help"); and/or sue for damages.

o. Lease Guaranties.

A lease guaranty (sometimes called a suretyship) is a contract between an individual or entity (called the guarantor) that is typically related to tenant. The guarantor promises to make payments due under the lease if the tenant defaults. Many commercial landlords require that a guarantor sign the guaranty to secure the obligations and liabilities of a tenant.

Depending on the financial condition and bargaining position of the tenant and guarantor, the parties may enter various types of lease guarantees:

- **Full or Absolute Guaranty:** A full guaranty provides landlord with the most complete protections, requiring the guarantor to cover all tenant's obligations, including monetary and non-monetary obligations; or
- **Partial or Limited Guaranty:** A partial guaranty may be limited to tenant's monetary obligations under the lease or cap the guarantor's liability at a specific dollar amount. Sometimes, a partial guaranty begins as a full guaranty that transitions to a partial guaranty upon a specific time or at a particular lease milestone. A partial guaranty may include a "burn off" or "sunset" provision where the total money amount of the guarantor's liability, or the total time period that the guarantor is on the hook, decreases before terminating altogether.

p. Confession of Judgment.

A confession of judgment clause is a contractual provision that permits a party to a commercial lease to avoid some methods of litigation and proceed directly to obtaining a judgment, significantly reducing landlord's repossession timeline and costs. A confession of judgment clause may permit a judgment for possession of real property, money damages, or both. Pennsylvania is one of only a few states that permit enforcement of confession of judgment clauses in commercial leases.

Pennsylvania strictly interprets confession of judgment clauses against the party seeking to enforce them and requires observance of specific formalities concerning confession of judgment proceedings. In addition to the requirement that a confession of judgment must be in writing and signed by tenant, the clause must be, printed in all capital letters, set out in paragraphs separate from other text, and written clearly and conspicuously.

These formalities exist because confession of judgment clauses limit due process and exert immense power over tenants. If the required formalities are not satisfied, the defendant may ask the court to strike the judgment in its entirety. This can be a complicated procedure, and it's important to carefully read and understand what this big, often bolded paragraph does in the lease.

If a landlord is confessing only a money judgment, the landlord may "confess" the judgment against the tenant for just the overdue rent or all rent due through the expiration of the lease term. Pennsylvania law also permits interest on past-due funds and attorneys' fees. In modern commercial leasing practice, many tenants are successful in striking the confession of judgment for money damages, and leaving in the confession of judgment for possession.

If the landlord is confessing an action for possession, and the lease does not contain a proper confession of judgment provision, Pennsylvania law permits the recovery of the premises through eviction and ejectment.