



Ten Steps to Negotiating a Tenant-Friendly Lease

Elisa Waldman, J.D.
Successful Studio Consulting, Inc.
(913) 449-3566
www.SuccessfulStudios.com
Info@SuccessfulStudios.com

Unless your previous career was in commercial real estate, securing commercial studio space can be an overwhelming, yet exciting, step in starting your new studio. The ceramic industry is wonderfully diverse, making it impossible to identify ten common characteristics which guarantee a successful studio location. While location is paramount, so is affordability, accessibility and an accommodating landlord. One item common to almost all storefront studios, regardless of location, is the commercial real estate lease. Below you will find ten steps to help you negotiate a tenant-friendly lease.

Go for the No!

You will never exceed or even meet your expectations if you enter the lease negotiations ready to settle and compromise. Any lease that a landlord presents to you is written in his or her favor, and the landlord expects you to negotiate the terms of the lease. Do not be intimidated because he or she is a “nice guy” – negotiate for what you need! Landlords are used to negotiating, and you will be jeopardizing the profitability of your new business if you do not negotiate. Simply stated, negotiate for more than you expect to get.

Consider Having Someone Else Negotiate on Your Behalf

If you are not comfortable negotiating (and many of us are not), consider hiring a broker, lease consultant or attorney to contact the landlord on your behalf. A lease is one of the largest contracts a small business owner will ever sign, and it is important to give the lease terms a great deal of consideration. A successful entrepreneur understands her limitations and appreciates the strengths that other professionals can bring to her venture. A professional advisor may be more effective than you in negotiating with the landlord.

Negotiate the Rent

Commercial rent is typically measured by the annual cost per square foot of the space, however, not all landlords express rent in the same terms. Typical rent calculations may include: *gross leases* (rent is stated as a flat monthly amount), *triple net leases* (leases which pass on all the operating costs of the building and real estate taxes to the tenant, usually as a figure separate from the stated rent per square foot), and *percentage leases* (leases which require the tenant to pay a fixed rental rate plus a percentage of income).

Do your homework and find out what neighboring tenants are paying for rent. Counteroffer the landlord's initial price by asking for a rent that is affordable for your business. It is also common to ask for a stair-stepped payment structure (this structure allows you to pay less the first year and increase the rent incrementally each year).

Negotiate the Length of the Lease

Commercial leases typically run anywhere from 3 to 10 years. Most landlords prefer tenants who commit to longer periods of time so that their property is not constantly turning over. While a longer lease inherently carries more risk for the tenant, it can also be beneficial to the tenant because a longer lease typically locks in rental rates for several years. Keep in mind that your business loan will usually not be granted for a term greater than the length of your lease. When negotiating, it may be necessary to sign a longer lease in order to secure a longer term on your business loan.

Identify in the lease the dates upon which the lease commences and ends. Unless the space is already vacant and built to suit your exact needs, the lease should spell out what happens if the space is not ready by the commencement date and what adjustments in rent will be made.

Many different terms can be negotiated at the same time. For example, if the landlord refuses to reduce the rent, but asks you to sign on for three years, you can counteroffer by proposing a five year lease at a reduced rent.

Include an Option to Renew

Although the end of the lease may seem light years away, time flies when you are having fun and making money. It is wise to include an option to renew in your lease. The

option to renew is a clause giving the tenant the right to renew the lease in the future at a set amount of rent at the expiration of the initial lease term.

Request Build-Out Credit for Physical Improvements

If there are physical improvements you need to make to the property, it is appropriate to ask the landlord for an allowance to make these improvements. Many landlords will offer a dollar figure per square foot to cover improvements, while others will offer to do the build-out for the tenant. This is the area of leasing most open to negotiation and bargaining between landlord and tenant.

You are more likely to convince a landlord to pay the bill for remodeling if the changes you are requesting will attract future tenants after you move on. Agreements about build-out should be stated in writing and include a detailed floor plan and estimate of the costs from a contractor before the lease is signed. This agreement should also identify who owns the improvements (the tenant or the landlord).

It is common to receive several months of “free rent” prior to opening your doors for build-out and set up. Hopefully, you will begin paying rent only once you are able to open the doors and generate revenue (or, if you are a skilled negotiator, maybe even a few weeks after that time).

Secure Your Ability to Sublease and Assign

Make sure that you have the right to sublease and/or assign the lease. Two years into your five year lease, your studio may be bursting at the seams and you need more space; if so, it is essential that you have the ability to find a new tenant to replace you. You never know when life’s circumstances may demand that you make a change, and the ability to sublet or assign the lease is a valuable asset.

Include an Exclusivity Clause

It is helpful to protect your investment by including an exclusivity clause stating that no other business will open in your shopping center which generates its revenue in the same way that you do. It is ideal to cast as wide a net as possible when wording the clause, but at the very least it should prevent direct competitors from infringing on your territory. In most cases, landlords are willing to agree to an exclusive use clause in your favor, but you must ask for this clause to be included.

Be Aware of the Personal Guaranty

It comes as a shock to many first-time retailers that most landlords will require the tenant to personally guarantee the lease. What this means is that you may be asked to sign a contract which states that, in the case that the business defaults on its rent, you will personally assume the rent obligation. Commercial landlords understand that by incorporating your studio you are shielding your personal assets from risk; that is exactly why they require a personal guaranty which effectively overrides the legal protections

that incorporating provides. In several years, when you renegotiate your lease by taking advantage of the option to renew, it may be appropriate to ask the landlord to waive the personal guaranty for the future.

Use an Attorney

While there are many legal issues that you can address without an attorney when starting your own business, the commercial lease is not one of them. Retain an attorney to review your lease. The lease is a critical aspect of your business that will be with you for many years; it is worth investing a few hundred dollars in attorney's fees.

Even with a lawyer in the mix, make sure that you understand everything in your lease and exactly what you are responsible for. If you do not understand it, work with your lawyer to have it rewritten until you understand and accept every word in it.

Conclusion

Lease negotiation is your first real opportunity to demonstrate leadership and creativity in business operations. As with any contract, there is no right or wrong way to negotiate. While the above-mentioned suggestions represent some of the more typical concerns, it is imperative to read your entire lease and do your homework before approaching your landlord to begin negotiations. Negotiating a few simple lease provisions may save you thousands of dollars and yield greater profitability for years to come.

Once the studio space is secured, you can begin to focus on establishing a presence in the community. In the next issue of *Popular Ceramics*, this column will address branding your studio and marketing for your Grand Opening.

Visit www.SuccessfulStudios.com to request more detailed articles on opening and operating a profitable contemporary studio.

Elisa Waldman, Successful Studio Consulting, Inc., consults with new and existing studio owners to help them open successful studios, increase profitability, maximize efficiency and enjoy their business. Elisa owned and operated Paint Glaze & Fire, Inc. from 1997-2005; prior to opening her studio and consulting business, Elisa practiced corporate law.

Elisa is currently serving as a Director of the CCSA, and she also works part-time as a business consultant for the Kansas Small Business Development Center.