

Signing lease? Watch ‘gotcha’ clauses



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Akin to having 50-yard line seats to the Super Bowl, very few people have experienced selling a company and crafting a lease with the buyer on a building that you own.

As you’ll recall, last week I delved into clauses and terms that you — as the owner of the real estate — should consider.

Today’s subject is a bit broader. Many of you have leased commercial real estate or know someone who has.

Certain paragraphs in commercial leases are nonstarters and should be carefully avoided, or at a minimum, carry a complete understanding of the impact. I’ve often called these “gotcha” clauses because they can be like a blitzing linebacker who strikes from the blind side. You don’t see him coming until it’s too late to avoid the carnage.

So we're going to continue dissecting those common "gotchas" that are often hiding in the fine print of your commercial lease agreement. And continuing our football theme, let's dive right back in, shall we?

First, there's the infamous "pass-through" provision. This is like a surprise onside kick. It's completely legal, but it's a play you aren't anticipating until you're handed an invoice for a share of the property tax increase, a costly building repair or other operating expenses that the landlord has conveniently decided to pass on to you. Always have your special teams ready for this one.

Second, we've got the deceptive "relocation" clause. You're enjoying a solid drive down the field, your business is building momentum and, out of nowhere, you're forced to laterally move to a different suite in the building. This allows the landlord to relocate you at his whim, leaving you to handle the ensuing confusion, relocation expenses and the challenge of keeping your business in play.

Third, there's the sneaky "escalation" clause. You think you've locked down your budget with steady rent, but then you find your rent increasing faster than a wide receiver on a deep route. The clause allows for yearly rent increases, leaving you scrambling to adjust your financial playbook.

Now let me introduce two more linebackers you need to watch out for.

The "automatic renewal" is one such contender. This, often hidden deep in the lease, will automatically renew your lease for a predefined period unless you give notice within a specific time frame. Missing the notification window can be just like a missed field goal at the final whistle — a minor oversight, but with major consequences.

Finally, beware of the "use" clause. This clause restricts how you can use the leased property, and any violations could lead to penalties or even eviction. It's like stepping out of bounds when you're sprinting toward the end zone — an action that may seem harmless but can abruptly stop your progress and cost you the game.

These "gotchas" might sound intimidating, but fear not. Like any savvy coach, you can prepare your strategy.

Read and understand each clause in your lease. Engage a skilled real estate attorney or an experienced commercial real estate broker to help you outsmart these challenges. Spot these blitzing linebackers before they sack you.

Next week, I'll share some offensive plays to help you mitigate the "gotcha" impact. After all, the best defense is a good offense. Stick with me and I'll ensure you're not only playing the game but also taking home the victory. Stay tuned!

Allen C. Buchanan is a principal with Lee & Associates Commercial Real Estate Services in Orange. He can be reached at abuchanan@lee-associates.com or 714-564-7104.