VISUAL LEASE

A COMPLETE GUIDE FOR

Lease Negotiations

Helpful Ways to Negotiate Ideal Lease Terms

For most companies, leases and operating costs are usually the second largest expense behind payroll. Yet, after the initial negotiation, companies often don't keep track of their lease terms or obligations — and that can mean missed opportunities, overbilling and wasted time.

Because leases are such a big investment, the ability to negotiate or renegotiate a lease is a critical part of managing business expenses. Lease negotiation requires understanding lease components and their implications, and then using that information to negotiate the best lease terms for your business.

A great way to prepare for negotiating a new contract or renegotiating with current lessors is to review your existing lease portfolio. It can help you get a good grasp of your obligations under different leases, which lease terms benefit you (or not) and how much flexibility there may be for negotiation.

In this guide, we'll look at four ways you can prepare for and effectively manage your next lease negotiation:

1. Identify opportunities to negotiate within leases
2. Evaluate your existing leases
3. Seek expert advice
4. Think about the future of lease language

Identify Opportunities to Negotiate Within Leases

In general, negotiation plays a bigger role in commercial leases than in residential or consumer leases. That's because:

- Companies often have needs specific to their business, such as the way a space is configured or special requirements for utilities and other features
- Lessors may be motivated to accommodate those needs to help seal the deal

In addition, businesses are more likely to lease larger quantities of equipment, vehicles and other assets than a consumer would. Although these leases often require customized contracts based on individual companies' needs, most commercial leases include some common terms and standard boilerplate language.

These terms and language might be negotiated at the beginning of a lease and then automatically inserted each time the contract renews, with little or no changes over time. However, there are a few factors that can help determine the flexibility and ability to negotiate lease terms.

Factors That Affect Negotiation Power

The amount of flexibility you have to negotiate a commercial lease often depends on the circumstances. For instance, if it is close to the end of a lease term and your landlord wants you to renew, you may have an opportunity to renegotiate a lower cost or other favorable terms.

Other things that may affect your ability to negotiate includes the size and value of the leased assets. For example, you may have some leverage to negotiate with prospective landlords if you are looking for:

- Prime locations for multiple retail stores
- Significant square footage for warehousing, a showroom or manufacturing facilities
- Multiple office spaces to accommodate doing business in different locations

The ability to negotiate a lease also depends on the flexibility of the property owner or provider. A landlord who is anxious to fill a vacancy may be willing to negotiate an incentive for you to lease, such as a generous Tenant Improvement Allowance (TIA) for customizing an office space to your needs.

Renegotiation of a lease in the middle of a lease term could be triggered by a hardship of some kind, such as a distressed market, a significant business disruption or even bankruptcy. In these cases, lessors may be more inclined to negotiate so that they get something rather than nothing.

For example, if you lease a large amount of square footage or a highly visible location in a mall or office building, the landlord may work with you on desirable lease terms to avoid having the space sit empty.

COVID-19 and Lease Clauses

The widespread effects of the COVID-19 pandemic has had a strong impact on both lessees and lessors. On one hand, landlords whose properties have been affected want to recover as much rent as they can. At the same time, many tenants have been looking for some form of relief from their rent obligations during the crisis. What they both have in common is that they have turned to their leases in hopes to identify some form of relief or protections.

According to a recent survey about the impact of COVID-19, 65% of participating companies had experienced some level of unoccupancy to their corporate real estate leased properties due to office closures. Still, nearly half (47%) of the companies paid full rent on unoccupied properties -- and a small fraction (8%) paid no rent. Regardless, more than half the companies planned to ask landlords for some rent relief, such as application of their security deposit or a rent abatement, reduction or deferral.

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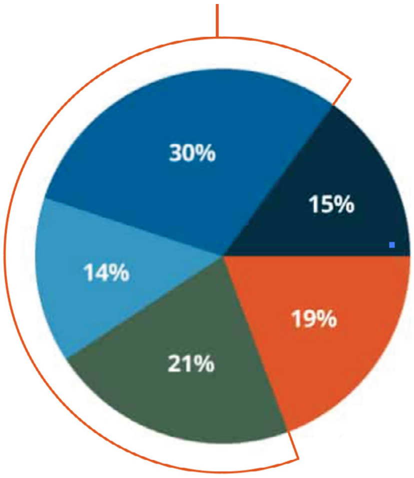


HAS YOUR COMPANY PAID RENT ON YOUR UNOCCUPIED PROPERTIES?

Tenants have looked to their leases for clauses like force majeure, casualty or business interruption to save money on rent.

However, these clauses have not been commonly found to apply to COVID-19, given it was unusual to include specific language about a pandemic in lease clauses before the current climate. However, that is something that may change in the future through lease negotiations.

Alternatively, some tenants and landlords have worked together during the pandemic on lease negotiations to ensure that both can stay in business during and after the crisis, and the landlord can continue to collect revenue from assets.

Evaluate Your Existing Leases

Your existing leases are a valuable source of information that can help your business negotiate new leases or renegotiate existing agreements.

Any lease that has been customized to your business needs provides an opportunity for you to identify lease language that has worked in your favor. Moving forward, you can choose to establish that language as a standard to use in new leases or renewal negotiations.

Conversely, if existing leases contain language that has not worked well for your business, you can try to avoid those terms in new contracts or renegotiate them at the time of lease renewal.

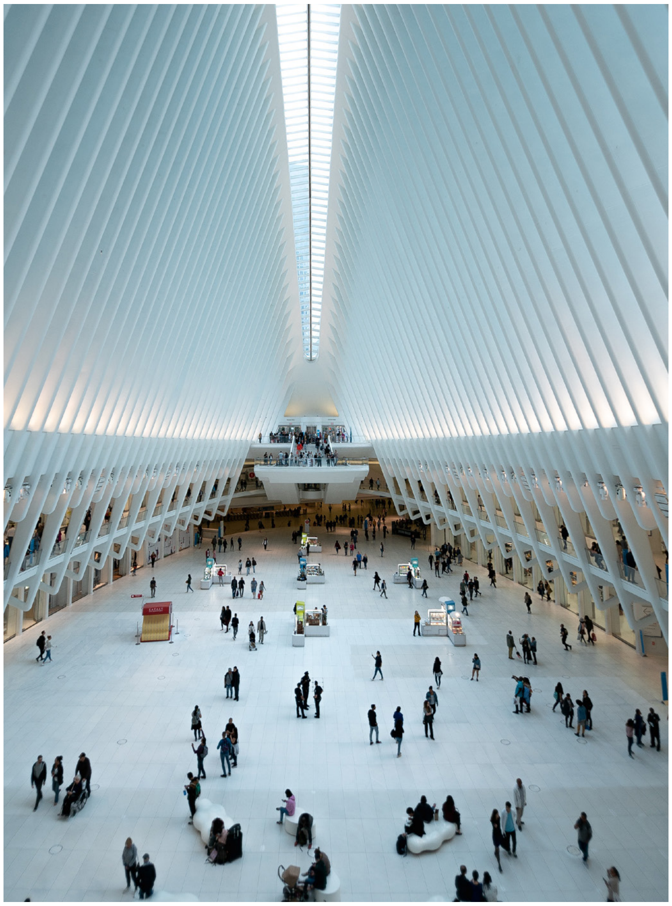
What to Look for in Current Leases

Naturally, you want to know what your rent and other lease payments are — but you also want a **clear picture of what you are getting for the money**. For example:

- How many offices or how much space do you lease from the same landlord?
- What is your cost per square foot?
- Is the cost based on occupied space? Or on total square footage?
- Is your rent comparable to what other lessees in the building are paying?
- Is your monthly payment comparable to or better than the current market rates?
- Are you paying for common area maintenance (CAM) and if so, how?
- Are there other shared costs (such as water or other utilities) and if so, are you paying more than your fair share?

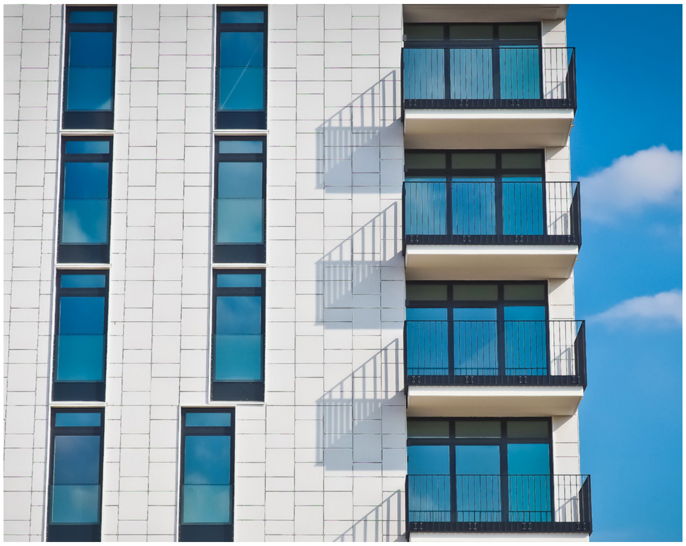
In addition, you should look at your leases to **determine whether your termination rights and renewal terms are favorable** to your business. How easy is it for you to get in or out of leased spaces?

- Is there a "lease kickout," or a threshold that allows you to terminate a lease if the location is not operating profitably?
- Is there a clause that allows you to terminate the lease on a retail location if there is a significant reduction in foot traffic or if an anchor store closes?
- If you have multiple leases and critical dates with the same landlord, can you trade off and move locations to make the best use of all the leased spaces?



Lastly, you should know **where you are in your current lease terms**, to be aware of automatic renewals, deadlines you must act on and possible opportunities to renegotiate before you renew. For instance:

- If you have several leases with the same landlord — such as space in multiple offices or malls — how much of your portfolio is about to expire? If a large number of leases are involved, the upcoming expirations may give you significant leverage in negotiations.
- Are your lease obligations short-term or long-term? If they are short term, you may soon have a chance to revisit lease language and make changes that will benefit your business.



With this kind of visibility into the details of your current leases, you are in a position to evaluate whether there is language you would like to renegotiate when a lease renews — or language you want to incorporate or avoid when entering into a new contract.

How to Search for Pertinent Lease Language

Manually searching through every lease for specific clauses and language is an incredibly time-consuming and cumbersome task. (Just ask anyone who has implemented or is in the process of adopting the new lease accounting standards — ASC 842, IFRS 16, GASB 87.)

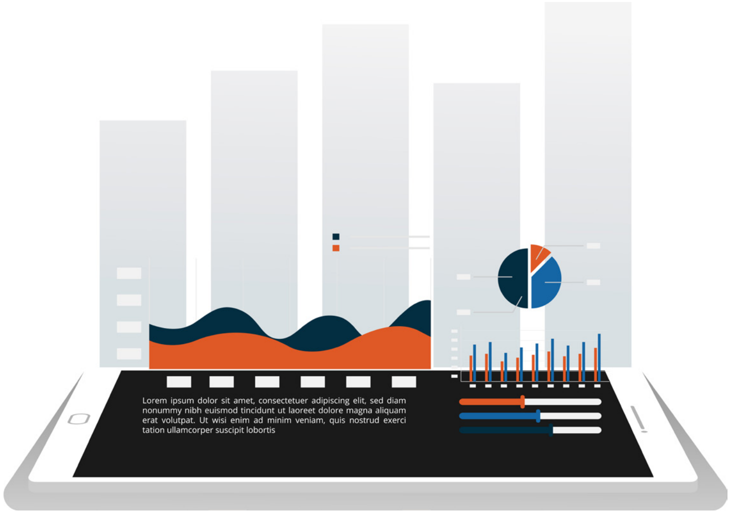
But by utilizing lease accounting and management technology, you can more clearly identify all your lease obligations and crucial lease language, which enables you to keep track of current financial obligations and critical dates, plus important details to help with future lease negotiations.

For example, lease management software can help you identify if you paid for space you did not use — or overpaid for services such as cleaning or utilities. Armed with that information, you can look out for those issues in new leases or address them in current leases prior to renewal.

With all your leases and important terms entered into a system, you can easily group information, generate reports and view a complete picture of your lease portfolio. You can also view individual lease details and cut data by region, landlord/lessor, expiration dates and other criteria.

Creating a digital portfolio of abstracted leases lets you search for both ideal and low-performing lease language to:

- **Identify lease terms that previously worked well for your business and use them in new leases**
- **Avoid under-performing language in new or renewing leases**
- **Renegotiate where possible based on what works well and what does not**



The lease management system you choose should allow you to bookmark specific language and establish it as a standard that you want to repeat in the future, such as:

- **A previously negotiated, favorable holdover rent rate of 125%, versus the typical 150% or even 200%**
- **CAM pro rata share language that bases the fee on the square footage of the space you occupy rather than the total square footage**

Further, a robust lease accounting and management system such as Visual Lease enables you to search for and identify automatic renewals on leases that you negotiated long ago, which gives you the opportunity to easily determine whether the terms are still favorable or if they need to be renegotiated.

Seek Expert Advice

Engaging with professionals, such as brokers or lawyers, can help you make smarter, more informed decisions about your leases. Lease experts can provide sound advice and help you better interpret and understand lease language, the current market conditions and your overall negotiation options.

Consult a Broker

Brokers are **not** experts in lease documents and legality. However, they can provide insights about the marketplace to help you decide whether to invest in a particular lease. For instance:

- Does it make sense to sign a long-term lease at current prices — or are prices likely to come down further?
- Do current lending rates make buying a better option than leasing in some markets?

A broker can perform a market analysis, which includes the typical pricing in a given area. In addition, brokers often know the lessors and are familiar with their business and reputation — added information that can be helpful to you as a potential lessee.

When you work with a real estate broker, they can help you better understand the current market and what is happening in neighboring communities.

For example, in the aftermath of COVID-19, a broker can tell you if there are rising vacancies and falling rents in certain locations. Those are trends that may open the door to negotiating with owners who are eager to have their properties occupied and generating revenue.

The same is true for equipment, vehicles and other frequently leased assets. There, brokers can tell you if prices are down or new stock is not moving — possibly giving you an opportunity to negotiate a price or opt to buy while the market is soft.

Additionally, there are brokers who specialize in meeting different needs based on the health of a business and its goals. For instance, there are real estate brokers who help companies lease high-end spaces. There are also brokers who help companies during situations such as severe market downturns or bankruptcies.

Still, remember that brokers are not experts in the legalities of lease language. Therefore, you should consult with an attorney regarding any lease.

Work With an Attorney

Before you commit to a lease — whether it is new, renewed or renegotiated — you should always work with an attorney. He or she can identify the high and low liability aspects of the lease and help make sure that you:

- Get the best terms in legal protections
- Limit your risks from a casualty and insurance standpoint
- Understand the boilerplate language often included as standard in leases (such as waiving the right to a jury trial)
- Know what all your obligations are according to the lease and agree with those terms

In lease negotiations, an attorney can ensure that a lease includes ideal language to protect your interests. This adds a level of refinement and enforceability that only a legal expert can provide. Still, remember that brokers are not experts in the legalities of lease language. Therefore, you should consult with an attorney regarding any lease.

Just as you should always consult an attorney before signing a new contract, it is also important to have an attorney review the documents for lease renewals and renegotiations. **Unlike a broker or other layperson, an attorney has the expertise to guide you through negotiations and manage complex lease language such as casualty and force majeure clauses.**

Additionally, there may be times when it is appropriate to use an attorney to revisit previously negotiated boilerplate language.

For instance, when you work with the same landlord for a long period of time or a multiple-lease portfolio, you tend to negotiate some standard language and then update the lease as needed in areas such as:

- Business terms
- Location-specific charges
- Insurance language

Ideally, you can work with the same attorney who was involved in negotiating the original lease, who can compare the documents and redline any changes or additions. At the very least, a new attorney can review the lease to make sure your interests are protected and there are no red flags.

Think About the Future of Lease Language

Tragedies that have a lasting impact on society are another factor that may affect lease language moving forward.

For example, after 9/11, lease provisions that were not intended to relate to terrorism became the subject of interpretation, negotiation and litigation — including clauses such as casualty and the obligation to restore, force majeure, insurance, release of liability, termination rights and prohibitions on offsets against the obligation to pay rent.

In the aftermath, there was a reexamination of what language to change in commercial leases to cover acts of terrorism, and who is responsible for the security and recovery of assets.

Similarly, in light of COVID-19, lessors, lessees and attorneys today are all thinking about lease language and how to handle issues such as a pandemic in the months and years to come. To date, it is still unclear how future leases might be different as a result.

In the meantime, you can start to maximize your return on lease investments with smarter negotiation or renegotiation. Leases are too expensive and important to be overlooked. Evaluating your existing lease portfolio for language and terms that are advantageous for your business can help you cut significant costs.

> "Leases are too expensive and important to be overlooked."

Get a head start on your negotiation power with a powerful lease accounting and management tool. More than 700+ companies have used Visual Lease as their chosen single source of truth for all leased real estate and equipment assets. Through proper lease management within one easy-to-use tool, you can simplify and automate lease information that you can leverage for more successful lease negotiations.

About The Visual Lease Data Institute

The Visual Lease Data Institute is a collection of market-leading data, trends and insights on lease accounting, management and optimization created and curated by Visual Lease, provider of the #1 lease optimization software. The Institute was founded on 35 years' experience managing lease data and financials, and was created to arm organizations with the knowledge required to achieve and maintain lease accounting compliance and leverage their leases as strategic business assets.