BLACKREFER INSIGHTS
PRACTICAL BUSINESS INSIGHTS

Before You Sign the Lease: The Commercial Lease Clauses That Sink Small Businesses



The number on a commercial listing is rarely what you'll pay. The clauses to check and negotiate before you sign: NNN charges, CAM, TI allowances, co-tenancy and personal guaranties.

Askia Jones · November 8, 2026

AI-GENERATED EDITORIAL COVER ART

INSIGHTS · BLACKREFER

Before You Sign the Lease: The Commercial Lease Clauses That Sink Small Businesses

By Editorial Staff · November 8, 2026 · About a 10-minute read

The number on a commercial listing is rarely what you'll pay. The clauses to check and negotiate before you sign: NNN charges, CAM, TI allowances, co-tenancy and personal guaranties.

Not legal or financial advice. This article is general education, not legal, financial or tax advice. Commercial leases are binding contracts, and the rules on zoning, occupancy and leases vary by state and city. Before you sign a letter of intent or a lease, have it reviewed by a commercial lease attorney licensed in your state, and talk to an accountant about what the total cost means for your cash flow.

Many first-time operators shop for space the way they'd shop for an apartment: find the right neighborhood, compare the price per square foot, and sign. That works for an apartment. With a commercial lease, the number on the listing is rarely the number you'll pay, and the space you see often isn't one you can legally open in.

The businesses that get hurt usually aren't careless. They signed a document written by the other side, priced on one line of it, and found the rest later: a pass-through bill for the building's operating costs, a buildout that cost more than the allowance, a use the building wasn't approved for, or a personal guaranty that outlived the business.

Below are the clauses that do the most damage, and what to do about each one before you sign, while you still have leverage.

Step zero: confirm you can legally open there

Do this before you negotiate a single clause. A zoning or occupancy problem found after you sign can leave you paying for a space you can't use. If you find it before you sign, you can still walk away or make the deal contingent on fixing it.

Zoning is local. The U.S. Small Business Administration puts it plainly: "Zoning laws are typically controlled at the local level, so check with your department of city planning." 1 Some cities go further. As of November 16, 2026, the City of Chicago's business licensing department tells owners: "Do not enter into any financial commitments (i.e. sign a lease) unless you have undergone a City of Chicago zoning consultation and review," and warns, "Do not assume the previous owner's zoning designation applies." 2

Then there's the building itself. In New York City, "a Certificate of Occupancy (CO) describes the legal occupancy limits, layout, and allowable use of a building," buildings "cannot be legally occupied" without a CO or temporary CO, and the CO "must be updated if you are changing the use." 3 The city's small business guide gives a simple example: if you rent a space for a yoga studio and the CO says office, "your use is not permitted." 4 Other cities use different names and rules, so ask your local building department what applies where you are.

A Seattle tenant checklist recommends three steps before signing: get a copy of the certificate of occupancy, "order a professional inspection," and have your contractor "review applicable building department records." 5

What to do: Make your offer or letter of intent contingent on a zoning confirmation and a CO review for your specific use. If the space needs a change of use, find out how long that takes and who pays for it. Paying months of rent on a space you can't open in can sink a business before it ever serves a customer.

1. Deconstructing NNN: what you'll actually pay

Many retail and restaurant listings quote a base rent "plus NNN." In a triple net lease, the tenant pays "its proportionate share of all real estate taxes, building insurances and operating/maintenance expenses (the three 'nets')… in addition to its rent." 5 In a gross lease, by contrast, you pay one base rent and the landlord covers the building's operating costs. 5 Many leases sit somewhere in between. The terms vary, so read how your lease defines what passes through. In New York City, for example, a common structure charges "additional rent" for your share of increases in operating expenses and real estate taxes over a base year. 4

An illustrative example (hypothetical numbers, not market data): suppose a 1,500-square-foot space is listed at $20 per square foot per year, plus NNN charges estimated at $8 per square foot. The base rent is $30,000 a year, or $2,500 a month. The NNN charges add $12,000 a year, or $1,000 a month. Your real occupancy cost is $3,500 a month, 40% more than the number you compared listings on. And unlike base rent, the NNN portion can change every year.

Read the CAM definition closely. Common area maintenance (CAM) can include "maintenance and repair, administrative fees, utilities, elevators, lobbies, landscaping, parking lot maintenance, management salaries, etc.," and "what is included varies by property type and building owner." 5 So what's excluded matters as much as what's included. The Seattle checklist notes that operating-expense exclusions "are highly negotiated," and lists common ones such as capital costs, the cost of the landlord's disputes with other tenants, improvement allowances for other tenants, and leasing legal fees. 5

Negotiating a CAM cap. A cap limits how much your share of controllable operating expenses can rise each year. Taxes and insurance are usually treated as "uncontrollable" and left outside the cap. 6 How the cap is written matters. One law firm describes caps on controllable expenses as "typically in the range of 3% to 10% annually," which is a useful reference point but one firm's observation, not a market standard. 6 The same firm explains the difference between cumulative and non-cumulative caps with an example: under a 5% cumulative cap, if expenses rise 3% in year two and 10% in year three, the landlord can carry the unused

2% forward, so your year-three increase is capped at 7%. Under a 5% non-cumulative cap, it stops at 5%. 6 If you can get a cap, a non-cumulative one protects you more.

Ask for audit rights. Exclusions only help if you can check them. As the Seattle checklist puts it, "Without an audit right, how can the tenant understand what the landlord is passing through." 5 Audit clauses usually set a deadline after the landlord sends the annual expense statement, 5 so put that deadline on your calendar the day you sign.

2. TI allowances: who pays to make the space work

Most spaces need work before you can open, and the expensive work is usually behind the walls. The NYC guide notes that a restaurant, for example, "may need refrigerators, ovens, and grease traps," and that building systems include electrical, plumbing, gas and HVAC. 4 In New York City the grease-trap part isn't optional: the Department of Environmental Protection requires any establishment that cooks, serves food or washes dishes to "install and maintain proper grease interceptors," and "Only a NYC Licensed Master Plumber (LMP) is qualified to install" them. 7 A space that was already a restaurant may have some of what you need. An office being converted to a café probably won't.

A tenant improvement (TI) allowance is money the landlord contributes toward that buildout. Before you count on one, understand how it works:

• **It's often priced into your rent.** The allowance "is often factored in to the rental rate." 5 You may be paying it back through rent over the term.

• **It has limits.** Landlords "restrict what the Tenant Improvement Allowance can be used for," and favor improvements that add lasting value to the building over furniture and cabling. 5 Your oven may not qualify; the electrical panel that powers it might.

• **You may have to repay it.** The NYC guide warns that under a full guaranty, a default may require repaying "any tenant improvement allowance, rent abatement/free rent, or real estate broker's commission." 4

What to do: Get a contractor's estimate for electrical, plumbing and HVAC work before you negotiate the allowance, so you're asking for a number grounded in your actual space. For example, a tenant might negotiate for the landlord to deliver the space with an upgraded electrical service or a working HVAC unit, rather than accepting a cash allowance that may not cover the job. Get in writing which items the allowance covers, when the landlord pays it, and what happens if the work runs over budget.

3. Go-dark, co-tenancy and exclusivity: protection you have to ask for

These clauses matter most in shopping centers and multi-tenant retail. They decide what happens when the businesses around you change, or when yours has to close its doors.

Exclusivity. An exclusive "prohibit[s] the landlord from renting another space in the building to a similar type of business." But the NYC guide is realistic: "Most landlords, however, will resist giving a tenant an exclusive unless it is a large tenant." 4 If you can't get one, protect your flexibility instead. The same guide advises defining your permitted use broadly: "restaurant," not "pizza parlor." 4 A narrow use clause can block you from adding catering, retail or a new menu later.

Co-tenancy. If you're choosing a location because of the anchor store next door, co-tenancy is the clause that protects that bet. According to an American Bar Association article, co-tenancy clauses "afford rent relief where another key tenant in the retail center ceases operating." The tenant pays alternative rent, such as a reduced rate or a percentage of sales, when named anchors, or a set share of key tenants or leasable space, aren't open. 8 Landlords typically attach conditions: a threshold, a cure period, a requirement that you keep operating, and limited relief. 8 Outside shopping-center retail, in small strip or office leases, expect to ask for one and often be told no.

Go-dark. A go-dark clause addresses what happens if a tenant stops operating in the space while the lease is still running. As one real-estate law firm's guide explains, some tenants refuse a "continuous operating covenant" because "it may be more economically prudent for the tenant to simply pay rent, instead of being obligated to continue to operate at a loss," and landlords who agree to that usually ask for advance notice, continued rent and a right to take back the space. 9 Courts in some states have declined to read in a duty to keep operating when the lease has a substantial base rent (Georgia's Supreme Court did so in Piggly Wiggly Southern, Inc. v. Heard in 1991), so if staying open matters to you or to the landlord, it has to be written into the lease. 10 Read this alongside co-tenancy: as the ABA article notes, landlords commonly condition co-tenancy relief on the tenant itself continuing to operate. 8 Before you sign, know whether closing temporarily (for a renovation, a slow season or a family emergency) would put you in default.

The personal guaranty

Forming an LLC doesn't automatically protect your personal assets from a lease. "Even if the business entity is the tenant… a landlord may require you, the business owner, to provide a personal guaranty." 4 Landlords often ask for one, and whether they require it depends on your finances and the size of your security deposit. 4

There are middle grounds. A "good guy guaranty" is a "partial guaranty": "Once the space is vacated, they are no longer personally liable." 4 These are common in New York City. One small-business law firm also suggests limiting a guaranty to base rent and CAM, or capping it by dollar amount or time. 11 Treat those as options to ask your attorney about, not terms you can count on.

Get help before you sign

Several of the guides quoted here come from city agencies and nonprofit groups that publish free lease help for exactly this reason. New York City, for example, says it offers "commercial lease education courses" and "pro bono (free) legal advice" through nyc.gov/businesssolutions or 311. 4 Check what your own city, Small Business Development Center or local legal-aid organization offers today.

A commercial lease is often one of the largest commitments a small business makes, and the price per square foot is only where the negotiation starts. Check zoning and occupancy first. Then go through the lease clause by clause with a lease attorney you've paid to look out for you. That fee usually costs far less than being stuck in the wrong lease.

Companion: 10-Point Commercial Lease Review Checklist

General education, not legal advice. Have a licensed commercial lease attorney review your lease before you sign.

1. **Confirm zoning for your specific use** with your city's planning or zoning office before you sign a letter of intent or lease. Don't rely on the previous tenant's use.

2. **Get the certificate of occupancy** (or your city's equivalent) and confirm it allows your use. If it doesn't, find out the timeline and cost to change it, and who pays.

3. **Order a professional inspection,** and have your contractor check building department records and price the electrical, plumbing, gas and HVAC work you need (grease traps, venting and power for restaurants).

4. **Calculate your true monthly occupancy cost:** base rent plus taxes, insurance and CAM. Ask the landlord for the last two to three years of actual operating-expense statements.

5. **Read the CAM definition line by line.** List what's included and push for exclusions such as capital costs, other tenants' improvement allowances, leasing legal fees and the landlord's disputes with other tenants.

6. **Ask for a cap on controllable CAM increases,** ideally non-cumulative, and confirm which costs (usually taxes and insurance) fall outside it.

7. **Secure audit rights,** and calendar the deadline to dispute each annual expense statement.

8. **Pin down the TI allowance in writing:** the amount, what it can pay for, when it's paid, who manages construction, and whether you'd have to repay it on default.

9. **Negotiate use, exclusivity, co-tenancy and closure terms:** a broad permitted use, an exclusive if you have the leverage, co-tenancy if you're relying on an anchor, and clear rules on whether a temporary closure counts as a default.

10. **Limit the personal guaranty:** ask for a good-guy guaranty, or a cap by amount or time, and have an attorney review the full lease and guaranty before you sign.

Follow BlackRefer Insights for more practical, sourced guides for Black business owners. And if you know a Black-owned business that belongs in the BlackRefer directory, refer it. It takes about a minute, and no account is needed.

About the editorial team: BlackRefer's editorial team researches and writes practical guides for Black business owners and the people who support them. Every statistic is linked to its primary source, and examples are labeled as examples.

Sources

1. U.S. Small Business Administration, "Launch your business: Business location" (accessed Nov. 16, 2026). https://www.sba.gov/counseling/launch-your-business/#business-location

2. City of Chicago, Department of Business Affairs and Consumer Protection, "Zoning" (accessed Nov. 16, 2026). https://www.chicago.gov/city/en/depts/bacp/supp_info/zoning.html

3. NYC Department of Buildings, Guide to Certificate of Occupancy. https://www.nyc.gov/assets/buildings/pdf/cofo_guide.pdf

4. NYC Department of Small Business Services, Comprehensive Guide to Commercial Leasing in New York City (current edition, undated). https://www.nyc.gov/assets/sbs/downloads/pdf/about/reports/commercial-lease-guide-accessible.pdf

5. Communities Rise and Seattle Office of Economic Development, Commercial Lease Checklist for Small Businesses (2021), pp. 5, 9, 14–17. https://communities-rise.org/wp-content/uploads/2021/01/CR-FINAL-Full-Lease-Tool.pdf

6. Lowndes, "CAM Expenses in Commercial Leases: Cumulative versus Non-Cumulative" (2022). https://www.lowndes-law.com/newsroom/insights/cam-expenses-in-commercial-leases-cumulative-versus-non-cumulative

7. NYC Department of Environmental Protection, Hospitality Industry Guide to Environmental Compliance in New York City (June 2019), printed pp. 12–13 (PDF pp. 16–17). https://www.nyc.gov/assets/dep/downloads/pdf/air/hospitality-industry-guide-environmental-compliance.pdf

8. M. L. Johnson, "Be Aware of the Interplay Between Co-Tenancy and Force Majeure Clauses," American Bar Association, Litigation Section (Apr. 23, 2023). https://www.americanbar.org/groups/litigation/resources/newsletters/real-estate-condemnation-trust/co-tenancy-force-majeure-clauses/

9. Cox, Castle & Nicholson LLP, "Top 10 Issues In Negotiating Go Dark Provisions In Retail Leases" (Fall 2013; law-firm guide). https://www.coxcastle.com/publication-top-10-issues-in-negotiating-go-dark-provisions-in-retail-leases

10. Piggly Wiggly Southern, Inc. v. Heard, 261 Ga. 503, 405 S.E.2d 478, 479–480 (Ga. 1991) (Justia). https://law.justia.com/cases/georgia/supreme-court/1991/s91g0333-1.html

11. The Small Business Law Firm, "What Every Small Business Owner Should Know About Commercial Leases" (2026). https://www.smallbusinesslaw.org/wp-content/uploads/2026/08/Commercial_Leases_for_Small_Businesses.pdf

Read online at blackrefer.com