

# 7 TIPS WHEN SIGNING A NEW COMMERCIAL LEASE

FREE GUIDE

NZLEGAL

A close-up photograph of a person's hand holding a black pen, signing a white document. The background is blurred, showing what appears to be an office setting. The image is partially obscured by a large, semi-transparent blue circular graphic on the right side of the page.



Signing a new commercial lease is a big commitment that can have a significant impact on a business' ability to trade profitably over a long period.

While tenants may have limited bargaining power, it pays to be aware of a few key issues when negotiating lease terms. Having an experienced property lawyer acting for you can identify fishhooks or clauses that may be problematic.

NZ Legal Director Adam Siddall's top tips include:

## 01

### Make Good And Reinstatement

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These are your obligations at the end of the lease, including outlining what condition the premises is in when you hand it back.

- Ensure photos are taken of the premises and attached to the lease so there's no ambiguity over the premises' condition from the outset. This should be the landlord's responsibility - if it hasn't been done, request they do it.
- Be wary of agreeing to cash settlements for reinstatement works - it can end up costing you more than it should. Instead, arrange to have the necessary works done to restore the premises to its prior condition yourself.

## 02

### Flexibility

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With the rise of remote working and employees wanting flexible work arrangements, many businesses don't need as much space as they used to.

It's becoming more popular for tenants to negotiate the right to shrink or expand the size of their premises depending on business needs.

You can do this by negotiating...

- Surrender rights for portions of the space
- First rights of refusal for additional space
- Break rights

Just remember, landlords want long term tenants. These provisions may impact your ability to secure a lease, so think about how important they are to you.

## 03

### Binding Agreements To Lease

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An agreement to lease often comes with binding provisions (the landlord's "standard lease form") that can't be negotiated.

Don't make the common mistake of thinking you can amend clauses in the deed of lease if you've already signed an agreement to lease - it's usually too late. Talk to a lawyer before you sign anything.

## 04

### Rent Reviews

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Pay close attention to if, when and how rent reviews will be conducted throughout the duration of the lease.

Rent reviews are most often aligned to either inflation or the rental market, and both of these options have pros and cons. Having a mixture of the two at agreed periods helps to standardise your rent.

Rent caps and collars are becoming more popular, because they limit the chances of being hit with a sudden, unexpected rent increase.

## 05

### Guarantees

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Personal guarantees are best avoided if at all possible, but if you have limited bargaining power then you may not be able to avoid providing one.

Just be aware that if you assign the lease at a later date, you'll still be personally liable if the incoming tenant defaults.

## 06

### Lease Incentives

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Incentives are common, and take many different forms. Be wary that incentives can be taxable to tenants, which reduces their benefit.

For tenants, incentives such as access to communal spaces or car parks, or the freedom to rearrange the space can help to make the premises attractive and appealing to staff.

## 07

### Outgoings

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Commercial tenants generally pay more than just rent - you're likely to have to cover your share of rates, insurance and utilities, as well as repairs and maintenance.

If you can, look at your landlord's outgoings budget so you know how much you're agreeing to pay. Be wary of agreeing to cover structural repairs or replace capital items - this can end up being expensive.



# Are you looking to sign a new commercial lease?

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Talk to NZ Legal about your leasing transaction so that you get the best outcome for your business.



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