

5 KEY TAKEAWAYS

Negotiating Commercial Leases and Important Lease Provisions

Kilpatrick Townsend's [Michael Myers](#) provided an introductory look at the law around commercial leases, as well as certain tactics for negotiating commercial leases, at a 2019 continuing legal education (CLE) seminar at the firm's Winston-Salem office.

Key takeaways from Mr. Myers' presentation include:

1

Commercial real estate leases in North Carolina are contractual relationships between a landlord and tenant and are not heavily regulated by statutes or laws, unlike residential real estate leases. Both landlords and tenants should enter lease transactions with a “buyer beware” mentality and should perform a thorough review, not only of the business terms of the lease, but also the legal rights and obligations.

2

When negotiating a commercial lease make sure a Letter of Intent clearly spells out all of the important business terms so the parties have a clear understanding of the “deal” before beginning lease negotiations and make sure to always negotiate the “deal killer” provisions in a lease first. This can help save time and money if you are not able to come to an agreement on the hard provisions at the beginning.

3

Both landlord and tenant should make sure they have their team in place and providing input during lease negotiations. These parties include real estate brokers, attorneys, lenders, architects and general contractors, property manager, insurance agent, etc. Each of these parties can add valuable input during lease negotiation.

4

Make sure you know the parties to a lease. Landlord should confirm the legal name of the proposed tenant, the tenant's financial strength and whether a guarantor of the lease is needed to bolster the financial strength and you should also confirm tenant's authority to enter the lease. Tenant should confirm that the landlord on the lease actually owns or has a right to lease the property as well as landlord's authority to enter into the lease.

5

All provisions to a lease are important and each should be negotiated carefully, but pay particular attention to some provisions that often are boilerplate like the right to assign the lease and to whom, indemnification obligations in the lease, and environmental rights and liabilities under a lease. These provisions can often be overlooked, but can be financially catastrophic to either landlord or tenant.