



*This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your situation.*

# The Importance of Lease Agreements for Tenants in the Operation of a Nonprofit

Megan E. Day, Esq., Graydon Head & Ritchey LLP

## Why Do We Need a Lease Agreement?

The purpose of a lease agreement is to provide for the rights and obligations of a landlord and tenant during a tenant's occupation of leased space. Nonprofits are no different than any other business when it comes to the necessity of a lease agreement. Without a lease agreement, both landlord and tenant could be put in a difficult position with respect to the availability of space, the amount of rent, and the responsibility for maintenance of the building, among other issues.

Nonprofits face unique challenges with respect to space. Some nonprofits serve a specific community and need to be located in a particular area to effectively serve their mission. Others receive monetary assistance from third parties and availability of funds might be dependent on factors outside of their control. Having a lease agreement in place can address these issues, in addition to a host of other issues that may arise.

## Key Terms of a Lease Agreement

Lease agreements can be drafted to address nearly any issue a nonprofit may face, but here are some of the most important terms to consider when preparing or reviewing your lease agreement:

- **Term:** a lease agreement should always clearly state when the term of the lease begins, and when it ends. Specific dates should be used, if possible, to avoid confusion. Without a specific term provided for, a landlord could require a tenant to surrender the space at any time.
- **Rent:** the amount of rent paid by the tenant should be specified, including the frequency of this payment and whether any prepaid rent was paid.
- **Space and permitted use:** any space the tenant intends to occupy or use should be described in the lease with as much detail as possible – even if the space is outside or in a separate building. Space the tenant intends to use only occasionally can be licensed, instead of rented, to save on costs. Tenants should also ensure that the lease contains a 'permitted use' section that expressly permits the tenant to use the space in the way, and for the purpose, the tenant needs to use it.
- **Renewal options:** renewal options may not be included in a landlord's form lease agreement. A tenant will want to negotiate the ability to renew its lease of the space, if it wishes, at pre-determined rent amounts.



- **Funding or licensure:** if a nonprofit is dependent on funding or specific licenses/permits, a nonprofit tenant can, and should, negotiate for termination rights upon the loss of such funding or licenses/permits.
- **Utilities, taxes, insurance:** a lease agreement should clearly state whether the landlord or tenant will pay for utilities, taxes, and insurance costs. If a nonprofit has special tax considerations, they can be addressed here as well.
- **Maintenance obligations:** it is also important that a lease agreement specifically describe what maintenance obligations each party will be responsible for.
- **Assignment and subleasing:** a nonprofit may benefit from having the ability to assign or sublease all or part of its leased space to another entity or person, or at least to a related entity, in case the goals, obligations, or needs of the nonprofit change.
- **Default:** landlord friendly lease agreements will not contain provisions pertaining to a landlord's breach of the lease agreement. As a tenant, you want to negotiate landlord breach language.
- **Environmental considerations:** you may consider including environmental covenants by the landlord in your lease agreement, especially if your nonprofit is serving children, the elderly, or animals.
- **Ability to grow:** if your nonprofit suspects it will outgrow its leased space before the end of the lease term, you may be able to provide for the ability to expand or relocate in the lease agreement.

## COVID-19

Due to the COVID-19 pandemic, a lot of tenants are asking: "Can I get out of my lease early, or defer any rent?" The answer always depends on the language in the lease. There are many ways a tenant may find relief in its lease, including:

- **Early termination language:** a lease may contain early termination language, and this is also something that can be negotiated at the outset. Typically, there will be a specific time frame during which a tenant can terminate early upon the payment of an early termination fee.
- **Force majeure language:** a lease may contain force majeure language, and this is also something that can be negotiated at the outset. Force majeure clauses provide relief in the case of unforeseeable circumstances outside of the party's control that prevent a party from fulfilling its contractual duties. However, force majeure language may be favorable only to one party, and often times the language will be drafted such that it can only be used to delay non-monetary obligations. Also, now that COVID-19 is a 'foreseeable' event, it must be specifically identified in order to be utilized under a force majeure clause.



- **Funding requirements:** as mentioned earlier, if a nonprofit has unique funding considerations, the tenant should try to reflect these considerations in its lease. This may, for example, provide that a tenant may terminate early if it loses a certain portion of its funding.
- **Negotiation outside the lease:** parties are always welcome to negotiate outside of the lease to find a solution suitable to both parties when problems arise. Right now we are seeing a lot of lease amendments that provide for a temporary deferral of rent, in exchange for extending the term of the lease.

## What Do We Do Now?

It is never too late to address lease issues since lease agreements can be modified or created at any time. If you are a PBPO client looking at renting space, are currently leasing space without a lease agreement, or are currently leasing space with an unfavorable lease agreement in place, please email [info@pbpohio.org](mailto:info@pbpohio.org).

**Not a Client?** Apply to become a client by submitting a [Request for Legal Assistance](#) online, or contact us at [info@pbpohio.org](mailto:info@pbpohio.org).

**About the Author:** [Megan Day](#) is a commercial real estate attorney at Graydon Law, where she counsels in the areas of leasing, acquisitions and sales, zoning, financing, and real estate and construction contract negotiation and dispute resolution. Megan also advises residential and commercial property owners regarding landlord/tenant and management issues.