

# Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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## AVOIDING UNEXPECTED COSTS IN LEASE AGREEMENTS

Although many aspects of life are shifting online, most businesses still need to secure sufficient office space for their employees, warehouse space for their product or retail space for their customers. Oftentimes, that occupancy arrangement comes in the form of leasing space from a landlord.



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Capital repairs and replacements are another potentially significant cost item that should be addressed in the lease. The lease should state which capital repairs and replacements will be made at the landlord's cost and which will be passed through to the tenant. It is common for capital repair or replacement costs passed through to the tenant to be amortized over the useful life of that repair or replacement, so that only a

fraction of the cost is passed through to the tenant each year. Without such a provision, an unsuspecting tenant may get stuck paying for the landlord's new roof over the course of a single year. This is especially problematic if the tenant only has a short lease term remaining, as it will have paid the entire cost for a benefit it will never realize.

Leases are complex documents. It can be tempting to gloss over the substance of the lease once the basic economic terms have been agreed to in a letter of intent. However, it is in the best interest of both the landlord and tenant to ensure the lease accurately reflects their expectations, as that document will guide their relationship for years to come.

Leases are typically referred to as being either "gross" or "net." A gross lease will typically require a tenant to pay a flat amount of rent each month, while a net lease will typically require a tenant to pay a flat base rent amount each month together with a variable amount of additional rent to reimburse the landlord for the costs of operating and maintaining the property. While a gross lease can provide cost certainty to a tenant, landlords typically prefer net leases because it provides greater income certainty to the landlord.

Net leases are fairly common, and it is commercially reasonable to enter into net leases, but there are a number of provisions that should be reviewed carefully, as many provisions could significantly increase leasing costs above budgeted levels.

A lease should clearly describe the costs that are passed through to the tenant and the costs that are borne by the landlord. It should also state which party will be responsible for performing various maintenance, repair and replacement obligations.

A tenant can gain additional cost certainty by negotiating into the lease a cap on annual increases in operating expenses. When negotiating a cap on operating expenses, the parties should consider whether the cap will be cumulative, where the maximum charge for operating expenses increases by the full amount of the cap each year (even if the actual operating expenses were lower than the cap), or non-cumulative, where the maximum charge for operating expenses in any given year can only be higher than the prior year operating expenses by the amount of the cap.

**TOP MARKETS FOR Office Leasing**

- TECHNOLOGY
- ADVERTISING/MARKETING
- HEALTHCARE
- CO-WORKING
- LIFE SCIENCES

Source: Westwood Net Lease Advisors, 2017

## BREAKING UP IS HARD TO DO: HOW TO PREPARE FOR THE BREAK-UP OF A BUSINESS

When starting a new relationship, whether it be a personal or business relationship, one never wants to think about the possibility of it ending. However, when starting a business, it is important to determine not only how the business is going to

run when things are going smoothly, but also how the business continues to run if a principal wants out, passes away, is not pulling their weight or if it is time to pass the business down to the next generation.

When a business is set up, we advise our clients to enter into an agreement which will provide the roadmap for these situations. The type of entity, whether it is a corporation, limited liability company or partnership, will determine the form and name for such agreement. In a limited liability company it is called an Operating Agreement, a contract between the principals, and it provides, among other things, the capital contributions of the parties, the allocation of profits and liabilities between the parties, the roles each party will play in the business and the authority each of them has to make decisions. It can even provide for how the determination of the value of a principal's share should be calculated in the event that principal leaves or passes away, the actions of a principal that would call for their resignation or termination or even the designation of how or to whom the business will be sold or passed on. The signing of the Operating Agreement should be done when the business is set up, when the principals are getting along and when they are thinking clearly about their intent for the business.



**COURTNEY HANNA**  
Joseph & Joseph Co. LPA

Finally, we would advise that all persons entering into a business have a good lawyer and accountant to help them through this process and to be able to explain the possible pitfalls of entering into such a relationship, as accounted for in the Operating Agreement.

### EDUCATION & EVENTS

Friday, Sept. 7 • 12:30 – 4 p.m.  
Legal Practice Lab Session 1: Personal 3.0 CLE Hours

Tuesday, Sept. 11 • 1 – 8 p.m.  
2nd Annual Jay Yano Memorial Golf Outing  
Individual tickets for the event can be purchased online at [www.cbalaw.org](http://www.cbalaw.org)

Wednesday, Sept. 12 • 1:30 – 4:45 p.m.  
The Basics of Landlord-Tenant Law 3.0 CLE Hours OR 3.0 NLT CLE Hours

Thursday, Sept. 13 • 2 – 4:45 p.m.  
Ballots and Bullets  
2.5 Prof. Conduct CLE Hours

All classes listed are offered at the Columbus Bar Associations offices, 175 S. Third St. Ste. 1100. To register, call 614-221-4112 or enroll online at [www.cbalaw.org](http://www.cbalaw.org).

Join us for the 2nd Annual Jay Yano Golf Outing on Sept. 11!  
All proceeds will benefit the Jay Yano Fund of the Columbus Bar Foundation.  
Register now: [cbalaw.org](http://cbalaw.org)

### Registration:

[www.cbalaw.org](http://www.cbalaw.org)

(614) 221-4112

**THE BASICS OF Landlord/Tenant Law**



**SEPTEMBER 12** (1:30-4:45pm @ the Columbus Bar)

This class will cover the laws surrounding rental properties, the duties of landlords and tenants, eviction basics, case law updates and more. Approved for 3.0 CLE/NLT hours.

