



Leasing Commercial Space

Leasing commercial space for a child care program is one of the highest expenses sustained by new programs, so it is important to do your research and planning before and during the negotiation of your contract. **We recommend that individuals work with a broker to help to negotiate with the landlord. It is also important to consult a real estate lawyer; they will protect your interests as you negotiate your lease through the broker.**

Things to look for in your lease;

1. Lease Terms

It is recommended that child care programs negotiate at least a 2-5 year term lease, with the option to renew. This will allow for the clientele to become acquainted with your business and to grow into your space. You will want to plan for rent increases over the term and renewal options, this way there will not be any financial surprises upon contract renewal (Remember to budget lease increases into your yearly tuition increases).

- Lease/lease term - when does it begin, are there renewal options, and do you have the option to expand?
- Rent, including allowable increases/escalations - how they will be calculated?
- Type of Lease?
 - i. Gross Lease - the rent includes insurance, property taxes, and maintenance costs
 - ii. Net Lease - charged for insurance, property taxes, and maintenance costs separately
 - iii. Occupancy Lease - the rent includes insurance, property taxes, and maintenance costs, utilizes, maintenance fees. - tend to be all inclusive. *sometimes used as a contract to allow renters to move in while contracts are being finalized or closing on escrow.
 - iv. Renters Agreement - typically just includes a lump rental amount and is not inclusive of all other costs needing to be paid by lessor.
- Security deposit - is there one and what are the conditions for its payment and return?
- Space for rent - what does it include? (Outdoor play space? Common areas - hallways, rest rooms, and elevators). How will the landlord measure the space?
- Termination of contract - What does it include? Notice requirements? Penalties for early termination?
- Disputes - how are they resolved? - Mediation? Court? Who pays the costs incurred?
- Will there be restrictions on business hours or days of the week where you can operate your business or receive clients and customers?
- Will there be any restrictions on the nature of business you operate?

2. Build to Suit/Fit Up

When opening a child care program, there will be needed renovations to fit up an existing building, or specific guidelines for a building that will be built to suit the child care program focusing on both indoor and outdoor play space. Since the rented space will have to be customized to fit your needs, these updates need to be discussed and written into the lease agreement prior to signing a lease. You and the landlord will have to negotiate who will create the design, who will (or will not) be able to do the renovation work, when the work will be complete, and who will be responsible financially for the renovations. If you are going to be renting a space that is in need of renovations or in a building that has not been completed. Remember to arrange for time without rental charges due to zero income for the business. Another thing to consider in the lease would be any additional renovations or if additional fixtures are added to the space.

- Who will pay for renovations and fixtures?
- Who will own them after the lease ends?
- Does it need a sprinkler system and/or centralized fire alarm system, based on local and state fire codes?
- Do you need to have an industrial kitchen installed? Who would cover the cost?
- Is there an intercom system or the capabilities to support one between the rooms, if desired? Who will furnish and pay for this?

**The Americans with Disabilities Act. The Americans with Disabilities Act (ADA) requires all businesses that are open to the public or that employ more than 15 people to have premises that are accessible to disabled people. Make sure that you and your landlord are in agreement about who will pay for any needed modifications, such as adding a ramp or widening doorways to accommodate wheelchairs.*

3. Maintenance & Utility fees

Commercial leases vary regarding maintenance and repair – some specify that the tenant is responsible for all of upkeep and repairs while others leases specify that the tenant is responsible for items like air conditioning, plumbing, etc. If you're a tenant in a multi-tenant building, you and the landlord will have to settle on how the utilities will be billed and paid for. Are utilities individually metered or apportioned by square footage? Ask to see these costs that are typically incurred by tenants **BEFORE** signing a lease, as they could negatively influence your budget.

- Who will maintain landscaping, snow removal, outdoor play space?
- Who will fix leaks, cracks, and paint?
- Who will clean what, when, how?
- Who will change light bulbs and filters?
- Who will fix small repairs, medium repairs, and large repairs – how are these categorized?

4. Insurance Coverage

Several kinds of insurance are available to cover the risks of leasing space, including;

- Property and liability insurance – child care programs have additional things to consider when taking out property and liability insurance.
- Rental interruption insurance - if your business is unexpectedly interrupted (natural disaster)
- Leasehold insurance - if your lease is canceled due to circumstances beyond your control and you have to rent elsewhere.

You'll need to evaluate each type of insurance coverage in the context of your lease and your landlord's requirements, your business needs, and the property -- and negotiate accordingly. An insurance broker can help, especially when it comes to choosing adequate levels of coverage.

5. Parking, Signs, Landlord's Entry, and Security

Marketing is an important piece of any business. Make sure to clarify in your lease information on what can be put where and if there are any restrictions. Although these clauses in the lease agreement may not seem important, it will save time and avoid complications in the long run.

- Are there specifications for signage? Where can you put them? What are the limitations for dimensions and possible power supply?
- How many parking spaces are you allowed?
- How will traffic flow be affected during drop off and pick up times?
- Where will staff park? What about vans or other child care specific vehicles?
- Who pays for the security? If there isn't any, who will pay for it and where can it go?

6. Protect Your Business

To protect your investment and long-term business interests, it is worth investigating and negotiating some potential add-on clauses to your lease. These might include:

- Sublease – This builds in some flexibility, allowing you to sublet your space to another business.
- Exclusivity – Prevents the landlord from leasing other spaces on the property to a direct competitor of yours.
- Co-tenancy – If the property's main (anchor) tenant closes business, a co-tenancy agreement can protect you from a potential loss of customers, allowing you to break the lease if the landlord does not replace the anchor tenant in a specified time period.
- Default on payment - Should you default on your lease payments, are there steps you can take during the lease negotiation process to protect yourself? Will you be locked out immediately? Will the landlord initiate eviction proceedings? Can you negotiate more time? Could you pay only the current month's rent instead of the remaining amount owed on the lease?

Resources

<http://www.nolo.com>

<https://www.sba.gov/starting-business/choose-your-business-location-equipment/leasing-commercial-space>