



Susan E. Wells  
Renee B. Gerstman

## Special Commercial Lease Considerations for Franchisees

Engaging in preliminary discussions and negotiations with prospective landlords for your new franchised business can be overwhelming. There are a multitude of business and legal issues to consider. It may also be intimidating, as this may be your first lease and the landlord probably has significant experience.

Your franchisor may provide assistance or training in lease terms or lease negotiations. Alternatively, your franchisor may refer you to real estate brokers or agents experienced in commercial leases generally or experienced in its real estate and lease requirements. If your franchisor does not provide you with the necessary assistance, seek out a commercial real estate broker or agent with experience in the type of space you seek in the geographic area you seek.<sup>1</sup>

In addition to the business and legal issues that all commercial tenants face, as a franchisee there are several additional considerations:

1. Your lease must dovetail the franchised business. For example, if the franchised business entails the sale of gadgets, the lease must permit you to sell them. Further, since the franchise agreement provides the franchisor latitude to modify the franchised business, you will need some latitude in your lease to do so.
2. Your lease must dovetail the franchise agreement. For example, if the franchisor requires your business to be operational during certain hours, the lease should permit you to operate during those hours, other tenants should be operational during those hours and the landlord should provide lighting, security and other services to the premises and the common areas, without additional charge, during those hours.
3. Your lease and applicable zoning ordinances must permit you to use the franchisor's standard signage and exterior décor. It is advisable to submit the franchisor's standard signage and exterior décor for landlord approval prior to lease signing, rather than leaving the matter to the landlord's discretion after the lease is signed.
4. You should submit the franchisor's lease addendum or rider to the landlord as part of your initial discussions. The landlord would be displeased to learn of these requirements at the last minute and lease negotiations may be jeopardized. In addition, if the landlord is not amenable to certain of the provisions required by the franchisor (such as the franchisor's first lien on certain of your assets and the franchisor's right to control the premises upon your breach), you may be wasting your time with that landlord.

---

<sup>1</sup> You may be tempted to rely upon the landlord's leasing agent, due to naiveté or your belief that you'll get a better deal because the landlord will pay lesser brokerage commissions. You should either get your own broker or agent who will represent *your* interests. At a minimum, you should understand that the landlord's agent is *not* representing your interests.

5. Your lease term, with renewal options, should track the term of the franchise agreement. If you lose possession of your premises, your franchise agreement may be terminated. At a minimum, you will have to comply with your franchisor's relocation requirements.<sup>2</sup>
6. If the lease provides for percentage rent and includes a prohibition against the operation of branded units within a stated distance, make sure that the prohibition does not extend to the franchisor or other franchisees.

Involve your franchisor in the site selection and lease process sooner rather than later. The franchisor should have expertise in what sites would be preferable for your franchised business's layout, build out and operations and probably has the right to approve or disapprove your site and your lease. If you sign the lease, or get too far down the road in your negotiations before getting the franchisor's approval, or at least input, you may be stuck with a lease that you cannot use for the franchised business. Optimally, your franchisor will provide invaluable assistance and leverage with respect to your lease negotiations and level the playing field with your landlord.

*Susan E. Wells and Renee B. Gerstman are partners at the Phoenix law firm of Wells & Gerstman PLLC. Susan's corporate and business practice encompasses all aspects of business matters and commercial relationships in numerous industries, including extensive experience representing both franchisees and franchisors. Renee's representation of small and medium sized businesses includes real estate and business transactions, commercial litigation and dispute resolution.*

This article is intended for informational purposes only and does not constitute legal advice or establish an attorney/client relationship.

---

<sup>2</sup> If the lease permits the landlord to relocate you into other space, you should make sure that your franchise agreement provides you that flexibility and that such relocation would not be a breach of the franchise agreement, or make the landlord's relocation right contingent upon obtaining the franchisor's approval.