Redwood
Property Group

Leasing Guide

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How Office Leasing in Manhattan Operates

Almost all (probably 99% of) office vacancies in Manhattan are shared in a multiple listing service called CoStar. CoStar is a subscription-based service that provides identical information to any real estate brokerage company that subscribes to it.

Most landlords hire brokers to promote their properties, but that does not mean you can only rent space in that building by contacting that broker. Brokers are hired to maximize the exposure and the first step is usually making sure the spaces are on the MLS as soon as possible so all other brokers are aware of them. If you contact ten brokers, they will all be searching the same database looking for space- it is rare that one will be able to show you something that the other one wont.

With few exceptions, landlords pay commissions to their broker and, if applicable, the incoming tenant's broker so a tenant should not be responsible for any brokerage commissions and your representation is free. Most leasing transactions do have two brokers involved- one representing the landlord and one representing the tenant.

Leasing From a Step-by-Step Perspective

STEP 1: Identifying Your Needs
This includes determining how many square feet you need, your desired layout, lease term (standard is usually 3-5 or 5-10 years), and budget along with cosmetic factors like flooring, ceiling height, and natural light.

STEP 2: Gathering/Preparing Financial Information
Before being accepted by a landlord, the landlord will need to review your company financial information. If you have it together before you find your space, it will make it easier to secure the space.

STEP 3: Finding Your Space
Some people know what they want immediately and others are more comfortable seeing enough spaces to get an understanding of the market first. As a potential renter, you can search independently or use a broker.

STEP 4: Submitting an Offer
Regardless of how long it takes you to find your space, it's critical not to hesitate once you do. Since commercial space is in high demand in New York, your window of opportunity is usually not very big. Some spaces sit on the market for months or even years, but the most desirable ones are often leased within a few days.

If you have already prepared your financial information, you will have saved crucial time and gained an advantage over another interested tenant that has not.

STEP 5: Negotiating Terms & Getting a Lease
If your initial offer is not accepted, the landlord will usually send you a counteroffer and you can begin negotiating the terms such as rental rate, free rent, landlord work, and length of lease. Once the terms have been agreed upon, the landlord will send you a lease.

STEP 6: Signing a Lease

Once you receive a lease, you can review it yourself or hire an attorney to review it. If you have questions you can either ask the landlord's representative, your attorney, or your broker. You can ask the landlord to make changes to some of the lease items, but they will not revisit any of the terms already discussed during negotiations. Typically, landlords will give a tenant a week to review a lease before they expect the first round of comments or a signed lease and checks.

Good Guy Clause

A good guy clause is a limited personal guarantee. The distinction between a good guy clause and a traditional/full personal guarantee is that in a good guy clause an individual's personal liability ends when the space is vacated. Therefore, if a company dissolves and the space is vacated, the individual is absolved of any further responsibility.

Good guy clauses evolved as a compromise between landlords and tenants in New York City and are now a standard component of commercial leases in Manhattan.

Landlords were having problems with companies going bankrupt, defaulting on their rent payments, and not surrendering the spaces. The eviction process can be very extensive and typically takes about 6 months.

In order for a landlord to feel secure they had wanted either 6 months security deposit or a personal guarantee from the tenant.

A good guy clause basically states that if a company defaults (for bankruptcy or any other reason), the individual that signed the good guy clause is responsible for the rent in between the default date and the surrender date (when the space is vacated). This way, if the company goes bankrupt, the tenant still has an incentive to vacate the space, but is not responsible for the remainder of the lease if they cooperate and "be a good guy".

For example, if Company X stops paying rent June 1 and Company X leaves June 1, the good guy is completely off the hook.

If Company X stops paying rent June 1 and Company X leaves July 1, the good guy owes the landlord rent for the month of June.

Good guy clauses usually, but not always, contain notice provisions (between 30 and 180 days) that can sometimes be negotiated.

Sample Good Guy Clause

The undersigned hereby covenants and agrees that if there shall occur any default by Tenant in the payment of fixed rent or additional rent or any other charges set forth in the Lease, or if Tenant shall default in the performance of any of the covenants, terms, conditions and agreements contained in the Lease then the undersigned shall in each and every instance up to and including the Release Date (as defined below) (i) pay such fixed rent, additional rent and any other charges due and payable by Tenant to Landlord (ii) faithfully perform and fulfill all of such covenants, terms, conditions and agreements to be performed by Tenant as set forth in the Lease, and (iii) pay to Landlord all consequential damages that may be incurred by Landlord as the result of any default by Tenant under the Lease including without limitation all attorneys' fees and disbursements incurred by Landlord as a result of any such default and/or the enforcement of any of the provisions of the Good Guy Clause. The "Release Date" shall mean the upon which Tenant returns to the Landlord the keys to the Premises and surrenders possession of the Premises in the condition required by the Lease as of the expiration or termination thereof free of all tenancies or rights or claims of occupancy by Tenant or any party claiming through Tenant.

Loss Factor

Loss factors are calculated by subtracting the usable area from the gross/rentable area and dividing by the rentable area. (Rentable SF - Usable SF)/Rentable SF = Loss Factor. Loss factors and usable sf are typically not disclosed by landlords.

The gross or rentable sf (before loss factor) is always the square footage advertised on a Manhattan office space.

The following article gives a great background on loss factors.

Once upon a time, many years ago when twelve inch rulers were inflexible, a hypothetical New York City landlord stood in the vast 10,000 square foot hypothetical lobby of his eleven story hypothetical office building, watching his hypothetical tenants arrive for work in the morning.

The landlord had successfully leased the second through the eleventh floors to ten tenants, each occupying 10,000 square feet. As the landlord stood in his lobby that day, considering the rental revenue his building was generating, it occurred to him that even though each of his ten tenants was paying rent based on 10,000 square feet, no one was paying him rent for his beautiful lobby even though every tenant walked through it at least twice a day.

Nothing if not an opportunist, the landlord decided that when he built his next building, he would tell each incoming tenant that the rentable area on each office floor was 11,000 square feet, even though each floor would actually contain 10,000 square feet. If anyone challenged him on his measurement, he would explain that since each tenant uses his lobby, each tenant must pay for its proportionate share of that common area.

And that is how Loss Factors were made ...

Well, maybe that's not exactly how it happened, but it is true that at one time, there was a rational explanation for why New York City landlords insist tenants pay rent per square foot for space tenants don't really occupy. (1)

Fast forward to today and Loss Factors have become a market driven business term, as relevant to tenants as rent, free rent and tenant improvement allowances.

Whenever a commercial landlord decides to sell an office building in the current climate (an extremely competitive, heavily picked-over sales market where $13.1 billion dollars worth of commercial property was sold in Manhattan in 2005 (2)), the first action taken by his sales agent is to increase the full floor Loss Factor to 25%.

Buyers of commercial property, particularly buyers of Manhattan trophy office buildings, generally don't question 25% full floor Loss Factors notwithstanding the fact that Manhattan office buildings come in all shapes and sizes with vastly different floor plate configurations, load bearing column density, width of perimeter HVAC convectors convector. Imposing a 25% full floor Loss Factor on an inefficient floor *plate translates into asking a tenant to pay rent for a lot of inefficient square feet.*

So you may be thinking to yourself, okay, a 25% full floor Loss Factor means that tenants actually occupy 75% of the rentable area in a recently sold Manhattan office building, right? Well, no, that's not really right. To understand how to measure and define office space in New York City one must first understand terminology.

"Rentable Area" represents the number of square feet based on which office tenants pay annual rent per square foot. Every landlord advertises vacant space based on Rentable Area but Rentable Area is only an approximation of the size of the premises.

The term "Usable Area", as it's commonly used in the NYC commercial real estate market, is essentially a misnomer. The Real Estate Board of New York (REBNY) guidelines for determining Usable Area were most recently updated in 1987 and recommend that landlords calculate Usable Area by measuring the entire floor to the outer facade of the building (often beyond the window line) and deducting only floor penetrations (e.g. elevator shafts, fire stairs, risers, etc.). According to REBNY guidelines, on a full floor basis, Usable Area includes electrical closets, fan rooms servicing the floor, janitorial rooms, bathrooms, load bearing columns and space occupied by perimeter convectors.

Loss Factors are the difference between Rentable Area and REBNY Usable Area (3).

Two other synonymous terms commonly used are "Carpetable Area" and "Assignable Area". These terms literally refer to the number of square feet on which a tenant can lay carpet.

On a divided floor landlords apportion common area hallways, bathrooms, electrical closets, slop sinks, fan rooms, etc. to the point where divided floor Loss Factors often rise well above 35% and Carpetable Area can be less than half of the Rentable Area.

So the market has all these terms for quantifying office space, some of which are more than a little misleading. What should tenants be aware of? Certainly, tenants should care a great deal about how much Carpetable Area exists in a certain premises since Carpetable Area correlates directly to how many bodies can fit into a certain space. Rentable Area is crucial too since the number of rentable square feet correlates directly to the annual (and monthly) rent.

Tenants should be aware of Loss Factors and floor plate efficiency. Tenants would be wise to confirm that a Loss Factor in a certain building is consistent with market Loss Factors. (This can be established by having the tenant's architect compare CAD drawings from comparable buildings.) However, in the final analysis, tenants should concentrate mainly on how many people a certain space can accommodate and what the rent is going to be every month, Loss Factors notwithstanding. This is especially true since once it's been established that a landlord is not pushing the Loss Factor envelope farther than his neighbors, challenging his methodology for measuring office space is like pushing a string. One silver lining is that landlords provide tenant improvement allowances based on Rentable Area while contractors tend to submit construction bids based on actual costs of construction, irrespective of Loss Factors. In terms of tenant improvement allowances, one could argue that tenants actually benefit from a high Loss Factor.

In defense of landlords, I recall one situation in the mid 1980's when an owner refused to *apply a Loss Factor to his vacant floors. Instead, he asked for a higher rent per square foot arguing that without a Loss Factor, his space was still less expensive than space being offered by competing landlords imposing high Loss Factors. Mathematically, he was correct. But tenants and many brokers didn't appreciate his logic and his space remained vacant until he applied a Loss Factor and lowered his asking rent.*

The New York City commercial real estate market, like all financial markets, is susceptible to herd mentalities. As long as most landlords uniformly apply high Loss Factors, tenants' only option is to fight their way up the learning curve and understand NYC Loss Factors for what they are: a market driven phenomenon.

1) Some say the genesis of Loss Factors has more to do with the advent of central air conditioning and the transition from floor by floor air cooled air conditioning units to HVAC mechanical equipment on roofs or designated mechanical floors, causing landlords to apportion mechanical space to tenants' Rentable Areas.

By David L Hoffman, JR
Executive Managing Director, Colliers ABR, Inc

Using a Broker

When looking for office space you can search independently or use a real estate broker (or multiple brokers).

The benefits of using a broker include the following:

1. Ensuring that you are aware of every space in your criteria. Since brokers all have access to each others listings, you don't have to worry about missing out on a space because you never knew about it.
2. Saving time. There is a lot of office space in New York, but the majority of available space is available for a reason- it's not appealing or attractive. Having someone save you from visiting 50 spaces until you find your office allows you to focus on your own full time job and minimize the disruption to your business.
3. Staying organized. Even a novice broker will keep track of properties you've seen, reasons you do and don't like certain spaces, and ideally take pictures of space you've seen for reference. Tenants looking independently or using multiple brokers often don't know which buildings they've seen and will visit the same property more than once with two different brokers. This wastes the tenant's time and discourages quality brokers from working for them.
4. Securing a space and saving money. A broker will help you present your company and offer in an appealing and appropriate way to an owner so the owner doesn't dismiss you. A broker with that has developed a landlord's trust can sometimes make the difference between your company or another company getting the first crack at a space. A broker with knowledge of the market can also help you negotiate a more favorable deal.

5. Being one of the first to know about new spaces. Undesirable properties usually lay stagnant on the market for months or years, but the most desirable spaces are leased almost immediately after they enter the market and sometimes before they even hit the MLS. In studying our records, 25-30% of our transactions have been completed on properties that are about to hit the market or right after they hit the market. If you don't have a broker that understands your needs working for you, no one is going to call you the morning a space hits the MLS (or right before) and encourage you to go check it out before someone else takes it.

Why Should Redwood Represent You?

At Redwood Property Group, we make sure to understand our clients' businesses and place a premium on efficiency.

From our perspective, it's a lot more rewarding to do an excellent job for a select few clients than to do a mediocre job for a lot of clients. We have successfully represented **all kinds of companies** from start-ups to publicly traded companies and the basic formula is the same:

- Take the time to understand our client's business and space requirements
- Educate our clients on market conditions and realistically set their expectations
- Preview and photograph the most attractive spaces to thoroughly present the best options
- Make sure our clients immediately know when new space comes available- often before it even hits the market
- Once the ideal space(s) is identified, advise our clients on the best negotiating strategy based on our experience with ownership and market conditions
- Always be available to act as an advisor for the term of the lease should questions arise

Of course, most vacancy information is readily available to any broker, but there is a lot of important information that isn't provided that we are very familiar with. For example, landlords that:

- are accustomed to working with startup business and more accommodating
- provide higher quality installations/build-outs
- are more open to considering short term leases
- typically require lower or higher security deposits
- have unfavorable clauses in their lease
- are more responsible managing their buildings
- are more accommodating and flexible moving around their tenants over the course of their lease

- take a long time to negotiate terms and a lease (useful for tenants with a relatively distant move-in date and good to avoid if you're in a rush)
- have restrictive or expensive move-in policies

We help tenants save time and money by presenting the right building and landlords. We pride ourselves in always being accessible and promptly responding to our clients any time day or night. We understand that securing your office space is a top priority for your business and we treat it as such.

There is no cost associated with our services. Our fee is always paid by the landlord that you end up leasing from.

New Office Checklist

Securing quality office space in New York City is often very competitive. Having as much preparation as possible can facilitate a fast negotiation and smoother, cheaper, transition. There's a good chance you will be one of several prospects for a particular space so how efficiently you can complete the transaction can make the difference between getting your space or not.

Below is a checklist of contacts, resources, and decisions that are helpful to have squared away when you begin your search:

For the lease process:

- Money for first month's rent, security deposit, and other move-in costs. Security deposits are typically in the 2-4 month range for a company with strong financials. If it's a new company or one without enough income to put a landlord completely at ease, it can be more. You should have at least 6-8 months worth of rent ready to dedicate to security deposit, rent, and other expenses so you aren't scrambling at the last second. If you don't have that kind of funds to dedicate, you should hold off on the search and maybe find a business center or short term solution until you can pull together the requisite cash.

- A quality New York City real estate attorney. One of the most common blunders I've seen is a potential tenant relying on an attorney that does not specialize in lease reviews and/or specifically, new york city lease reviews handle the negotiation of their lease documents. This will almost always cost the tenant extra money, extra time, stress, and most importantly, can leave them less protected throughout the course of the lease than they otherwise would have been.

  > If you're drafting a baseball team, it makes the most sense to pick players that have played a lot of baseball rather than basketball players, even if it's the best basketball players of all time (remember Michael Jordan?)

- Decide who is signing the good guy guarantee. This is a standard part of most leases and unless you are a huge corporation or want to put up 3-4 months of extra security deposit, someone will need to sign, usually the president of the company. If you have several partners, this is a discussion that would be prudent to have ahead of time. As a compromise, multiple people can be liable- it doesn't reduce anyone's individual liability, but it does give the other guarantors more of a reason to comply with the stipulations of the guarantee.

- Determine internet requirements: almost any building in Manhattan will have "high spend internet"- at minimum DSL, cable or T1 available which would satisfy most businesses. However, if you are in a business that has higher IT needs like film editing, media, etc; you might need something more robust. Determining your usage needs in terms of mbps is a smart thing to do. Ideally, you don't have needs that would require anything more than a basic connection so your options aren't limited. If you do have heavy IT needs, you're better off weeding out the buildings that don't have it available before even looking at them.

    If you learn that your IT needs are more than a basic connection, I would contact the providers that service the building to confirm that they do, in fact, service the building and the speeds that are available. The landlord's broker(s) often don't know all of the providers that service the buildings and sometimes even (unintentionally most of the time) mistakenly tell you providers are available when they aren't. If it's vital to your business, you should confirm firsthand that it's in the building before moving forward with the lease.

For move-in:

- Insurance Agent: almost all leases require the tenant to maintain specific insurance coverage and name the landlord as additionally insured on the policy. You will need to secure this coverage prior to moving in. It's usually not a long process, but it's smart to take care of it as soon as you can. If you leave it to right before you want to move in, it could potentially hold up your move.
- Schedule for internet installation: this can have a lead time of a few weeks so I always recommend that a tenant call to arrange an appointment to get their service activated as soon as they can. If the lease doesn't end up being signed or the possession date is pushed back, you can cancel with no penalty.
- IT wiring company: this is separate from the providers and is a contractor that can install your phone and data lines. Obviously this is an essential step in the move in process
- IT support company: if you don't have your own in-house IT department for computer, phone, and web issues, you may want to consider hiring a company to handle these needs for you.

- Air conditioning contractor: if you have a central air conditioning unit, it's most likely that the lease stipulates that you are responsible for obtaining a maintenance contract for the life of the lease. You will want an air conditioning contractor to inspect the unit prior to lease signing to make sure it's in good working order and you aren't penalized for receiving a broken unit. In the summer, air conditioning contractors are very busy so it's hard to get an appointment. It's much easier to get an air conditioning contractor to inspect your unit and send you a maintenance contract before their busy season. So if you're signing your lease in February, don't wait until May to address the air conditioning.
- Moving company: if you're moving in at the beginning or end of a month, it's going to be hard to find an available mover unless you book weeks in advance.
- Furniture vendor: it can often take weeks for furniture to be delivered so it's smart to give yourself as much lead time as possible.
- Office equipment: printers, copiers, and other business machines are part of almost every office
- Window treatments: unless you are in a class-a building or taking over a space that was previously occupied and still in tact, you will be responsible for any window treatments you want. This can also involve a little lead time so it's best to get it out of the way sooner than later especially if you are lucky enough to rent one of those super bright spaces that everyone seems to want.

Why Can't I Find a One-Year lease?

One of my most common challenges with first time nyc office tenants is conveying how rare it is to find a one year lease. Companies looking to rent their first office in Manhattan will often assume that a one-year term is easy to get or even standard.

While there are a couple landlords that specialize in renting small, cheap spaces routinely for one year, most landlords, especially in quality buildings require 3 or 5 year minimums.

You can stumble onto a sublet with approximately one year left, but I wouldn't hold my breath waiting for one if it doesn't pop up on your broker's first run through CoStar. Trying to rent for a one year is like trying to lease a car for 9 months or renting an apartment for 4 months. It's not impossible, but it is extremely difficult and your options are going to be severely restricted.

Why wouldn't any landlord take a 1 year lease?

- Usually spaces need some work to get them into move-in condition. At minimum, it's usually new paint and new carpet (or refinishing hardwood floors). Sometimes it can be demolishing or adding an office. This is not a major cost when amortized over 5 years, but for 1 year, it doesn't make as much sense.
- Very aggressive landlords will prebuild space, spending a lot of money to display a beautiful, finished product. Often the cost of gutting a space is equivalent to about a years worth of rent. Clearly it doesn't make sense to do this once a year (and leave vacancy time to rebuild and rent the space)
- Renting a space takes work. A landlord needs to approve the tenant, sometimes meet them personally, introduce them to the building, get them moved in etc. A landlord doesn't want to have to spend his time doing this for someone that doesn't want to commit to a long term tenancy in their building
- Legal costs: the landlord's attorney still charges the same amount to negotiate a 1 year lease as a 10 year lease
- Brokerage commissions. A landlord pays less of a broker fee on a short lease, but since a standard commission schedule is lighter in the later years and also does not account for escalations, it's less commission on average per year for longer

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leases. For example, a landlord will typically pay 5% of the first year's rent for commission and 2.5% of the 6th year and he will be receiving over 15% extra rent in year 6 on escalations that he is not paying commissions on. This makes the commission for year 6 less than half of that for year 1.

- Renting a space takes time. Each time a space comes available, it's probably going to be vacant for a few months before it's rented again. It's not the end of the world to lose 3-4 months between 5 year leases, but to lose 3-4 months between 1 year leases is a huge problem.
- Move in dates. Most New York leases start on the first of the month so the landlord can lose 0-30 days from the time of lease execution until the time they actually start getting rent. 20 days lost on a 7 year lease is insignificant, but on a one year term it matters. Keep in mind that there is also time spent negotiating the terms of the deal and reviewing the lease which can be another few weeks to few months depending on the size of the space.

As an example:

- A landlord is looking to lease a space for $10,000 per month
- He spends $75,000 renovating it
- He spends $5,000 marketing it (floorplans, brochures, e-marketing, mailers)
- It's vacant for 4 months
- He finds a tenant that negotiates the terms for 2 weeks and finishes executing the lease another 3 weeks later.
- The following first of the month is 17 days after the lease signing.
- He spends $2,000 in attorney fees
- On a 5 year lease:
- He pays $36,000 commission (1 commission to the tenants broker, and half a commission to his broker), an average of $7,200 per year
- The out of pocket expenses ($82,000) average $16,400 per year
- The lost rent (6 months) averages to $12,000 per year
- His net is $120,000-$35,600 ($7,200 + $16,400 + $12,000) = $84,400 per year (plus escalations)
- On a 1 year lease:
- He pays $9,000 commission

- $120,000 – ($9,000 commission + $82,000 out of pocket + $60,000 lost rent = $151,000)
- His net is negative $31,000!
- To further exaggerate this, after 5 years (and 6 months)
- On a 5 year lease, the landlord will profit over $422,000 and save a lot of time and energy.
- By doing 4 one-year leases, the landlord will lose $124,000 and have to lease the space 4 times, a difference of over half a million dollars.

Of course, one year tenants can renew, alleviating this issue (and possibly saving them on the commissions) and some landlords don't spend much renovating their spaces (and some spend more).
Either way, it's probably becoming clear why all these landlords are being so stubborn and inflexible about renting you their spaces for one year.

What If I Don't Know How Much My Company Will Grow?

First of all, does anyone really know how much space their company will need in a few years? This is normal.

If you're a startup or rapidly expanding business, the most logical fit is a short term lease, but since they are few and far between, what alternatives do you have?

1. If you're doubling or tripling every few months, or are just starting with one or two people without an existing track record, a business center or executive suite might be the right temporary fit. You pay a much higher rate per square foot, but you have the flexibility of signing for often as little as 3 or 6 months and can quickly and easily expand with the center which can serve as an incubator for your business. All furniture and phones are usually provided and set up can be relatively seamless. It might be worth paying a few extra bucks to get you through a short uncertainty period and save you a lot of trouble and commitment.
Business centers typically don't look into your financial background at all and require low deposits (since you are signing a "service agreement" and not a lease, they don't need to spend up to 6 months evicting you. If you default, they can just kick you out like someone that's had too many drinks at the bar).

2. Sign a standard lease. This can often be as short as 3 years. There are three common exit strategies for this:

A) Growing within the building/portfolio. If you are bursting at the seams after a year and the landlord has a larger space for you (in the building or in another one of his buildings), the landlord will usually extend the first opportunity for his existing tenants to rent the space before it's on the market.
This makes sense for the landlord since you are already prequalified (you already were checked out thoroughly when you signed the lease and have been paying rent since), he saves on legal fees since you have already reviewed and negotiated his lease, he won't lose any rent on the upcoming space, and he can show your smaller and usually more in-demand space before you move. Obviously, he'll also have less space available.

It's not unusual for tenants to start in a small space and move five or six times over a few years into a very large space in the same building.

The advantages for the tenant are they can exit their current lease, they don't have to go through a qualification process, don't have to endure a lease negotiation (they can keep or adjust the already agreed points), and the move will be much easier.

In order for this process to work the most smoothly, there are a few key things to pay attention to:

- Although you will usually be accommodated regardless since it makes sense for the landlord too, it's a good idea to insist there is a clause in your original lease stating you will be able to relocate to larger space as it comes available. There will be a percentage attached to this (usually at least 30-50% larger) since a landlord is not going to want to move you from 2000 sf to 2200 sf, it's just not worth the trouble. Don't confuse this with "a first right of refusal". This is problematic for landlords because they may rent a space they did not think a tenant was interested in and then get sued by the tenant because he didn't offer it to them first or because they didn't decline it in writing (the landlord could get sued even if the tenant didn't actually want the space). Also, they can't give more than one tenant "first right" so someone else may already have it.
- Make sure you are in a large enough building. Being able to move around is great if you are in a 40- story building with space coming available frequently, but it's fairly useless if you have a full floor in an 8 story building.
- If you have a small space, going with a huge landlord might also be a bad idea. If you have 1000 sf and your landlord owns 10 skyscrapers, relocating you is not going to be their first priority.

B) Sublet or assign your lease. Finding a subtenant is not always a piece of cake, but if you are realistic with your expectations and have a nice space, and use a good broker, you will find someone. If the market has sunk since you have rented the space, you should realize that you will probably still be taking a monthly loss on the rent even when you find a subtenant. However, if the reason you are moving is because of growth, your business is doing well and this is a legitimate expense that is aiding growth (and you are probably making more money).

If the market shoots up, you should be able to turn a profit on your space and/or rent it very quickly. For example, if you rent your space for $40 psf and two years later rents have increased 50%, you are paying about $43 psf (after 3% escalations) and the building direct leases are going for $60 psf. It would be easy for you to rent your space for $47 or $50 psf.

Keep in mind that there are usually clauses in leases that ownership will share your profits from subletting (after taking into account expenses like commissions, repainting etc). The percentage will be spelled out in your lease and can be negotiated. Sometimes the lease will even read that ownership will get 100% of the profits, which you should obviously try to bring down. Predictably, landlords will not share the sunken costs if you find someone to pay less rent than you are paying.

Since they are in smaller supply, sublets can be desirable for other tenants seeking short-term or even furnished space (if you don't need your furniture anymore). Both can be huge selling points.

C) Go out of business. If the reason you don't need the space is because your business has failed, you can dissolve the entity on the lease, adhere to the stipulations of your good guy clause (usually giving enough notice, leaving the space in good condition, and leaving on time), and can walk away without further obligations.

3. Negotiate a buy-out or cancellation clause in your initial lease. Not all landlords will be open to this, but some will if it is fair. A typically buyout amount is determined by holding the tenant responsible for the balance of the landlord's unamortized costs, cannot be used until a certain point in the lease (or sometimes only at one point), and will require a notice period. Unamortized costs primarily consist of brokerage commissions and cost to build the space. If you're anticipating growth, it can be a good idea to attempt to insert a buyout since you will still have the option of subletting or growing within the building, but having a more clearly defined exit strategy can be advantageous.

To summarize:

- If you’re growing extremely fast or starting really small, spend a few months in a business center.
- If you’re expanding and your landlord can accommodate you in a larger space, great!
- If you’re expanding and your landlord has no space, you can sublet or assign. You might lose a couple months of rent or eat a monthly cost, but remember your business is expanding (good problem to have) and you are probably significantly more profitable and can afford this cost associated with growing your business.
- If you have a buyout clause and decide to exercise it, again, it’s the cost of doing business and the reason you are exercising it is that you are making more money.
- If your business has failed, you can disband the company and walk away from the lease.
- Besides, wouldn’t it be more disruptive and costly for your company to sign a series of one-year leases, spend the last few months of each year frantically looking for space (since you are on a deadline), spend money and time moving, and lose time with rent overlapping? Why not pick out a building, location, and landlord that’s a good match for you and move around within their building without losing any rent overlaps, negotiating any new leases, and without having to even walk out of your lobby to look at new space.
- It might make more sense to do the work once every 5 years and then focus on your actual job rather than trying to look for space every year. If your company is growing, you are probably very busy doing other things!

How Do I Get Approved As a Startup Business?

The most important part of any offer is the prospective tenant. If you are a new business and don't have anything to show, the owner may reject you outright or require a higher security deposit (6-12 months).

Everyone needs to start somewhere. You can establish a financial history while in a business center that barely has any financial requirements. Or you can approach a standard office lease with a couple solutions:

1) Personally guarantee the beginning of the lease. It would be foolish for anyone that wasn't unnecessarily wealthy to personally guarantee a 10 year lease, but it's not unreasonable for someone to put their money where their mouth is for just the first year or two.

The term "personal guarantee" can give some tenants an allergic reaction, but as one landlord I know put it, "If you don't even have confidence in your business, how can you expect me to?"

After all they are signing the agreement and putting up the up-front costs with the assumption you will last the entire lease term. It would be a lot more justifiable for them if they knew they were at least getting the first year of rent (especially since the landlord's upfront costs can often be equivalent to a year of rent if there is a build-out). Once you have paid rent timely for a year or two, the personal guarantee can revert to a good guy guarantee.

2) If your company is funded by, or is an offshoot of a larger company, you can have that company sign a corporate guarantee. This is the same concept as a personal guarantee and can also be dissolved or turned into a corporate good guy guarantee after a certain period of time.

3) Offer a higher security deposit that burns down as the lease wears on. Start with 6 months, after a year of paying rent, bring it down to 5 months, after another year bring it

down to 4 months. This way if you go out business after two months, the landlord is well protected, but if you go out of business 3 years from now, you're not getting killed on the deposit on top of it.

Keep in mind that things like having an impressive website can also help make the landlord feel more comfortable. Also realize that every landlord is different. I've had the same tenant approach two different landlords with the same financials and have one landlord offer her a 7 month deposit and another landlord offer her a 3 month deposit (guess which space she rented). I recently even had one very responsible and knowledgeable landlord rent my tenant a space without even asking for financials since the tenant gave her a 3 month deposit (which is minimal) and signed a standard good guy guarantee Granted, that was the first time in 5 years, but again, every landlord is different.

If you have the luxury of a few good options for space, it can be a good idea to submit your financials to all of them and see who is willing to be the most flexible on deposits and guarantees before you make your decision.

What If I'm Too Busy to Look for Spaces?

Sometimes I get a call from someone's assistant or intern (or employee that just started a month ago) looking for an office space in NYC. The owner of the company is too busy to look for the new office. I don't think it's a bad idea to have an assistant weed through, meet, and basically interview potential brokers to prevent the owner from wasting time seeing the wrong spaces and talking to people that have no idea what they're doing.

If and once a tenant finds a competent commercial broker in NYC, it's usually more efficient to communicate with them directly. Sometimes it's a matter of trust and people feel more comfortable putting their confidence in someone who knows them better (and they pay), and has a clear incentive to recommend the right places.

After all, if you could have your assistant just deal with a few brokers, why would you waste your own time dealing with them? The assistant could visit all the properties, take notes, take pictures of all of them and report back.

Or you could have an expert do all of this for free and have your assistant do the job you are paying him or her to do. The advantages of dealing directly with one broker are easy to understand.

- Your broker looks at offices all day every day for years. Your assistant has another important job to do and typically doesn't have years of experience in commercial leasing. As stated already, you save money and increase productivity by keeping your paid employees or interns doing other work for your company

- You can communicate your needs to your assistant, have your assistant relay them to your brokers, and then have brokers show your assistant the space. This is thorough, but here are few reasons this is less than ideal:
- The "telephone" effect. Since the message is being delivered through an intermediary, certain things may not be as clear and the reasons behind certain criteria might not be able to be explained.
- Efficiency. You still need to pay your assistant for the time he or she is out looking at properties and making calls. If you have a broker that understands your needs,

the broker can visit the properties, make recommendations, and even take pictures to send you.

- Organization. If you have your assistant corresponding with three different brokers, each of which does not know which properties your assistant has already discussed or seen, it makes it difficult for the assistant and the brokers. The assistant needs to keep three different lists and the brokers need to guess about what properties your assistant has seen (or more likely just lose track of who showed what), not to mention you have three brokers calling the same landlord when a new space comes available all claiming to represent you. Eventually, the busier brokers will get frustrated and move on. If you have one broker organizing, keeping track of everything, and getting all your feedback on the spaces you've seen, they will be in a much better position to make suggestions and evaluate properties on your behalf.
- It's important to realize that new york commercial leasing is done primarily using a multiple listing service that contains almost every listing in Manhattan. Any broker with a subscription has access to the same database of listings which contains nearly everything. Most landlords hire brokers to promote their properties, but that does not mean you can only rent space in that building by calling that broker. The brokers are hired to maximize the exposure and the first step is usually making sure the spaces are on the MLS as soon as possible so all other brokers are aware of them. If you call ten brokers, they will all be searching the same database looking for space- it is rare that one will be able to show you something that the other one wont.
- Some brokers (likely the less desperate and probably more effective ones) will decide it's not worth spending valuable time dealing with someone's assistant since it can be less likely to be successful
- Some brokers (including myself) consider it a red flag when an assistant is being delegated to handle the responsibility because it could mean that the boss is "too busy" with other things. I usually interpret this as the search for the office not being as serious or urgent and the assistant is (knowingly or unknowlingly) just doing some research without the principal having the intention of actually renting a space (or renting a space any time in the near future). This would make some brokers, especially more experienced brokers uninterested in helping you.

What Should I Look for When Reviewing My Lease?

Just like with anything else, it's important to strike a balance between being too careful and being negligent. Not reviewing a lease carefully or not using the right attorney can leave you vulnerable over the course of your lease. Proposing too many changes to a lease can cause the lease process to drag out, run up your legal fees, and possibly jeopardize the landlord renting you the space.

Especially on shorter term leases, remember, if you are paying your rent and don't have any intention to sublease, it's unlikely any of the finer points of the lease will be revisited. Of course, it does make it easier when you have a short, simple lease as opposed to a long, detailed lease, but most NYC leases are of the longer variety.

Here are a few things you should pay attention to:

- Base tax year: This is usually (but not always) addressed prior to drafting a lease, but it doesn't hurt to double check that this is set to the appropriate year or you will be paying for it every year when real estate tax increases are assessed.
- Landlord Work: If you are the tenant, you want this to be as specific as possible. If the landlord has not committed in writing to do certain things, he is not obligated to. For example, things like types of finishes (marble, granite, stainless steel), dimensions of glass openings in offices, types of lights being used, hot water for your sink, a certain type of radiator, type of ductwork, and walls with specific insulation. If you don't have it outlined in the lease and you sign it, you don't have any recourse. Don't go too crazy with it on insignificant things, but if something is important to you, I would make sure it's explicit.
- Extra monthly charges: This will usually be spelled out before a lease is drawn, but some landlords will try to sneak a few in. Look out for things like water, sprinkler, carting, guard charge etc. Again, these will usually be presented beforehand, in which case you have already agreed on. But if they haven't been, there's no reason you should pay for them. I've even seen leases where they hold the tenant responsible for their proportionate share of toilet paper, paper towels, and cleaning supplies in the bathrooms!

- Insurance Requirements: Make sure they are appropriate to the size of your space and quality of the building. Remember, insurance is not that expensive and does benefit you so I wouldn't make a huge issue out of this.
- Notice Period on Good Guy Guarantee: This will have the most impact on you personally if your company goes under so I would try to reduce this as much as possible. Keep in mind that the higher the security deposit is, the more leverage you should have on the notice period. For example, if you have a 9 month deposit, they might let you off the hook with 45 days notice. If you have a 2 month deposit, it might be 150 days. Typically, 90 days or less is pretty reasonable to have.
- Air Conditioning: If it's a class A building, you are usually not going to be responsible, but if it's a "B" or "C" building, you usually have your own air conditioning unit(s). If it's a central a/c unit or window unit, you want to make sure it's delivered in good working order and try to get a grace period on the replacement if it fails. For example, on a 10 year lease, try to make the landlord responsible for replacing the unit if it breaks down within the first 2 years. Or if you have 3 window units, have the landlord be responsible for replacing the first one (and you're responsible for the rest). You're also going to want the landlord to be responsible for the first servicing of the ac unit. Keep in mind that it's almost always the tenant's responsibility (and in their best interest) to keep a maintenance contract for central air if it's in the space.
- Overtime HVAC: Especially in Class A Buildings, your hvac hours are probably going to be limited to a variation of normal business hours. Anything outside of that will be considered overtime and billed at a very high hourly rate (usually about $100-$200 per hour). Most people don't ever use the overtime hvac, but make sure it's not insanely high (I've seen $300+ per hour for about 2500 sf), and if it is, try to change it.
- Window Cleaning: It's usually the landlord's responsibility to clean the exterior of the windows in a Class A Building. In a "B" and especially a "C" building, it's often the tenant's responsibility to clean the *exterior* of the windows. It's actually not as expensive as you think it would be (probably about $20-$50 a window), but I would try to get the landlord to clean them once for you at the beginning of the term and they usually stay pretty clean for a few years.
- Right to Expand Within The Building: Try to get ownership to agree in writing that you can expand into a larger space provided it is at least X% larger than your existing space. Obviously, the lower the percentage, the better, but I wouldn't expect to get anything lower than 40% (at the lowest). It's typically in the landlord's best interest to accommodate a growing tenant as well so I wouldn't assume the landlord has an

issue with this if they don't concede. Usually it's to limit their liability (like most things in a lease).

- Late Fees: Make sure you have a reasonable grace period on rent payments and try to get the first late penalty waived, or even be permitted one late payment every few years if possible. Sometimes there are clauses stating if there are, for example, 3 late payments in a year, the landlord has the option to terminate your lease. Make sure the landlord can't kick you out if you are two days late on your rent one time!
- Mandated Improvements: This means if the owner needs to upgrade anything required by the government, you have to pay your proportionate share. If at all possible, try to get this eliminated or restricted to a certain cap. This often won't be in the lease to begin with.
- Use of Premises: Try to get this as vague as possible in case the nature of your business changes or you want to sublet. For example, you're better off having "Office Use" than "Marketing Company" or "Travel Agency".
- Holdover Clause: This can typically range from 1.5X the escalated rent to 3X the escalated rent. It is in your best interest to get this as low as possible (but don't expect to get it lower than 1.5x in the best case scenario). This is particularly important if you end up subleasing the space for less than you are paying.
- Sublease Notice Period: Most landlords will expedite the approval process for subleases, but it will help to shorten the notice period so you can "promise" a sooner occupancy date for a subtenant that needs the space urgently (and get yourself an extra month of rent).
- Sublease Profit-Sharing and Right to Recapture: Landlords usually share about 50% of the profits from any subleasing, but make sure that it's not anything more and keep in mind that they have the right to recapture, you may not ever get to profit. Also, make sure that the landlord gets 50% of the profits *after* all the expenses like brokerage commissions, legal fees, reimbursing the landlord's legal fees, etc. They will also expect a percentage of any profits from furniture and fixtures sold (even though you bought them), but again, at least worth a shot to eliminate that.
- Sublease Approval %: Try to avoid requiring approval for subleasing less than 30% of your space (for example renting out an office within a law firm). Landlords usually won't care anyway when it comes down to it, but better off not even having to notify them.
- Sublease Broker: Some leases may have clause requiring you to use them as the broker if you sublet. It definitely wouldn't hurt you to have the choice of what broker to use. Sometimes you won't get the choice, but it doesn't hurt to attempt.

Make sure your lawyer is familiar, and preferably specializes in New York City real estate. It's a relatively unique leasing process and often times attorneys that are not familiar with Manhattan office leasing will try to change things that are standard, which could result in giving you bad advice and causing you to walk away from a completely typical lease. They can also propose too many changes to compensate and turn off the landlord or unnecessarily lengthen the process.

The point of having a lawyer look over the lease is to make sure you are protected. If you have a friend that's a lawyer and not a new york real estate attorney (and review the lease cheap or on the house), and they don't know what they're doing, it defeats the purpose. If I have a friend that's a mechanic that works on motorcycles at a Honda dealership, I'm not going to ask him to replace the engine on my (hypothetical) BMW 5-Series and vice versa.

Most leases don't have anything egregious in there, but every once in a while you find something preposterous. For example, I have seen a lease that gives the landlord the right to terminate the lease at any time for any reason with 30 days notice! Not only that, but they wouldn't remove the clause, only change it to 60 days.

Needless to say, an experienced broker will let you know about something like this before showing (or more likely, not showing you) space in a building.