

COMMERCIAL LEASES

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Lease Review

Experienced real estate agents may have valuable input as to lease terminology. However, it's critical to understand that unless they also are legally qualified to practice law, then it's advisable to have an experienced commercial real estate attorney review such documents.

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Meet Little Johnny

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policy wouldn't have been tax-deductible to the business, but the death benefit would have been received tax free by the company.

As business owners, our businesses are often a large part of who we are. The sacrifices every business owner makes to create and nurture a successful business are great – too great to have the results of those sacrifices disappear in a moment by failure to plan. Please consult with your financial planning professional on the steps necessary to protect and preserve what may well be your biggest legacy – your business.

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Business Professionals Really Make a Real Difference

By Gregory Nelson • SCORE Representative



Many small businesses try to save a little money by not taking advantage of the expertise of professionals. In the end though, this oversight can be a costly mistake. The professionals I'm talking about are attorneys, CPAs, insurance agents, financial planners, and bankers.

Until 1998, I owned a small computer software company which provided tools and productivity products for the large IBM mainframe client, primarily Fortune 1000 companies. While we were a small company (7 people at its largest), we did well enough that I was able to sell the company and retire at age 39. I'm confident that the outcome wouldn't have been the same had I not listened to professionals in the areas that really made a difference.

No good story is complete without some real life examples to back it up. So here are some of my experiences:

- **Corporate Attorney** – A good attorney can really make a difference, particularly if your customers sign license agreements or you enter into regular contracts. Early on, I didn't use an attorney and I entered into some software distributor agreements that were less than favorable for me. At the end of the day, I missed out on a large offer to purchase my company for the sole reason that I didn't have proper exit strategy clauses in my distributor agreements. During due diligence, this was discovered and the deal fell through. Once I began using a good corporate attorney, these issues were cleared up and when I finally sold the company in 1998, everything worked out.
- **CPA** – My accountant more than earned every dime I spent by taking the time to ensure that my company was sold using the best tax strategy for me. By structuring the deal as a stock sale versus an asset sale, I saved significant income tax costs on the gain from the sale. Without my CPA, I wouldn't have had a clue and would've likely done the deal however the buyer wanted it structured.

- **Insurance Agent/Financial Planning** – Good people in this area will help your small company not only with the proper insurance to protect your assets in case of disaster or lawsuits, but they can help you with attractive employee benefits packages. These packages can help your company maintain a competitive edge and retain your employees longer. Even as a very small company, I was able to offer very flexible health plans and top-of-the-line retirement programs without taking any of my time.
- **Banker** – A good relationship with a bank can mean the difference between success and failure. My business had its financial ups (when sales were great) and downs (when you're spending all your money on new development and busy hiring talent). Without an understanding banker who knew me and believed in me, I wouldn't have been able to obtain the financing I needed when I needed it. Take the time to show your banker your business plan and explain why you need what you need and how you'll be able to pay a loan back. I searched hard for a bank that was willing to have a personal relationship with me, as when I first started out I was rather extended. But I had a great idea and a plan!

To get the most out of these relationships, keep all professionals regularly updated as to changes in the company as well as long-term company goals. SBRN is the perfect resource to help you find the professionals you need. By trusting the expertise of SBRN, you can reduce the time it takes to find quality professionals that understand you and your company's goals.

Gregory Nelson is Chairman of SCORE Naples. He can be reached at (239) 430-0081 or www.scorenaples.org.

Con-nec-tions

1. The act of connecting, or the state of being connected.
2. That which joins or relates, a bond or link.
3. Group of associates, often considered influential in some way.
4. **Small Business Resource Network.**

Watching the Goose that Lays the Golden Eggs

By James Docster • Financial Advisor

Cash is king, as the old expression goes, and it's also what keeps you in business. A lot of small business owners focus on their profit and loss statements, but fail to spend enough time analyzing their cash flow.

If you have a lot of cash invested in inventory and much of your income is locked up in accounts receivable with slow paying customers, the resulting cash crunch could cripple your business. Even though your business may be profitable, the failure to manage your cash could threaten its survival. Just as oil is necessary to a car's engine, cash flow is the grease of your business.

Cash flow management is a process that involves planning. This process includes: forecasting cash needs, collecting accounts receivable, controlling the timing of disbursements, and the amounts invested in inventory. Therefore, cash flow planning requires monitoring nearly every aspect of your business. This practice also helps create a more predictable business, making it easier to plan and budget. This is an area where your bank should be able

to provide some value added services.

As you build your banking relationships, ask about how the bank may be able to help improve your cash flow. Besides lines of credit, banks also offer small business owners services that were previously reserved only for larger businesses.

For example, businesses that have a lot of incoming checks can benefit from a lock box that can reduce check clearing time. Customers remit to a post office box that the bank empties daily.

Computerizing checks is another service that might be worth considering. Remote check deposit is a relatively new service that allows businesses to buy a desktop scanner that electronically inputs checks into the bank's computer system. This service eliminates the trip to the bank and also gets checks into the business's account immediately and reduces the "float-time." It's also a measure of protecting the business from insufficient fund



checks being accepted.

One of the most frequent missteps small business owners make is failing to manage customer payment terms. Can you really afford to be giving customers 60-day payment terms when your bills are due in 30 days? Collecting deposits upfront with orders is another strategy that's easier to employ than most believe.

Remember, profit and cash flow are two completely different things. Small businesses owners need proper planning for both to remain successful.

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COMMERCIAL LEASES

By Eric Ramshaw • Commercial Real Estate Consultant

Whether office, retail or industrial, there are several lease considerations of which many business owners are unaware:

Letters of Intent

The potential parties to a lease may initiate a formal lease proposal by first submitting a letter of intent (LOI). This letter briefly outlines the proposed terms of a lease including the amount of space involved, the usage, rent and term. Assuming the recipient of the LOI accepts the basis, a formal lease is then prepared reflecting the terms indicated in the LOI. This document also includes the detailed, far more specific lease terms, which are negotiated between the parties.

Rent Liability

When a lease is signed, the business owner(s) becomes liable for the rent over the entire period of the lease. For example, with a five-year lease of \$3,000 per month, the total amount of the lease for which the tenant becomes liable would be \$180,000. Therefore, should the tenant vacate the premises after 2 years, the balance of \$108,000 is still due.

Lessees frequently are under the misunderstanding that if they sub-lease the property, they're no longer liable. In actuality, the opposite is usually the case. The reason for this misconception is that the sub-lease payment may not be paid and any personal guarantees by the lessee will, if necessary, be used by the landlord to satisfy payment.

Types of Leases

There are gross leases, triple net leases and those in between. The latter are often described as modified gross. A gross lease includes all of the expenses incurred by the landlord which are incorporated into the rent figure. The triple net (NNN) lease is comprised of a base rent to provide a return on investment for the property owner. In this arrangement, operating expenses usually are a separate charge. The operating expenses may be known as common area maintenance (CAM) charges. These costs are usually estimated for the whole building and allocated to tenants on a percentage use basis. At the end of each year, the landlord typically provides a summary of actual expenses and an adjustment is made for any discrepancy. A new estimate for the forthcoming year is then prepared using actual figures.

CAM items usually include real estate taxes, property insurance (for the building to be occupied) and items such as landscape and parking lot maintenance, utilities, pest control, common elevators, janitorial, lighting and security etc.

Both gross and base rents may be subject to variations. One frequent such variation is the use of escalation clauses. These provide for an annual percentage increase in the base rent.



Alternatively, the increase may be based on Consumer Price Index fluctuations.

In retail leasing it's not unusual to have a base rent with additional rent becoming due once a certain level of gross sales has been reached by the tenant. An example may be that when gross sales reach \$1,000,000 then an additional charge of 5% of sales over that amount will be charged as additional rent.

Lease Restrictions

There are a number of restrictions incorporated into leases. The most common relates to specified usage of the premises. Others may restrict operating hours and possibly provide for additional charges for electricity if air conditioning is used outside of normal office hours. In retail premises, the landlord may require a minimum number of operating hours. Signage may be limited to conforming sizes and colors to achieve a uniform appearance or comply with city regulations.

Usable Space vs. Rentable Space

Where there are several tenants in one building, the actual number of square feet to be occupied is usually less than the amount of space for which the lessor charges. This arises because the building may contain stairwells, elevators, shared bathroom facilities, etc. The space occupied by these items is not directly occupied by individual tenants but nonetheless they're provided for the use of the tenants-at-large and the cost of providing them must be recouped by property owners. In consequence, a percentage of the whole is allocated to individual tenants.

Other Considerations

Heating, Ventilation & Air Conditioning: It behooves tenants to closely review the lease terminology as regards HVAC. Tenants are usually responsible for HVAC maintenance contracts and/or repairs. A fair landlord will provide at least an initial guarantee period for an older system.

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Meet Little Johnny – Your New Business Partner

By Jon Castle, CFP®, ChFC® • Financial Advisor

Steve and John had been friends for a long time. They were the best of friends starting in fourth grade when Steve had helped John face down the school bully. They'd been on the high school basketball team together, gone to college together, and had even proposed to their future wives on the same night. Soon after, they even went into the heating and air conditioning business together – an “even Steven” partnership, they called it. Steve, as president and COO, ran the crews and supervised the contractors while John, as CEO, pounded the pavement for business and coordinated the jobs.

Over the years their business grew. Before long they had 12 crews dispatched every day. John's business acumen and sales skills had the company's services in high demand, and Steve's people skills and work ethic kept customers loyal and crews productive. After 22 years, the business was worth \$4 million and generated revenues of more than \$1 million a year. Then Steve and his wife were killed in a car accident by a drunk driver.

John was crushed. In addition to losing his best friend, he also lost a huge part of his business – the man who made everything happen where the rubber met the road. Sure, there were some great guys on the crews, and with some training, one of them might be able to step up and shoulder some of the burden of being the big boss, but it would take months – even years – to train a replacement.

John sat in his office, head buried in his hands. There was a knock at his door, and in stepped what was to become his worst nightmare: Steve's son Johnny. Johnny, John's own namesake, was a 20-year-old high school dropout with drug problems and expensive tastes. With a sinking sensation that bordered on nausea, John realized he was looking at his new business partner. As 50% owner

of their joint business, Steve's entire ownership stake in their business now belonged to his only son – Johnny. In the months that followed, Johnny



did little to help the business other than demanding 50% of all revenues generated. With little understanding of economics other than his own expensive tastes, he inserted himself into every business decision – from hiring to firing to bidding for contracts. Soon, loyal crews departed to the competition. No-show rates of employees skyrocketed. The work that actually did get completed was rarely finished on time and rarely passed safety inspections. Before long, the company was barely surviving – hanging on by a thread as it fought tooth and nail for each piece of business it landed.

Why did this happen? Was it fate? Hardly. Steve and John had simply made the same mistake that many business owners do – failing to realize their own vulnerability. With simple planning, the destruction of the business could have been avoided. Granted, nothing short of clairvoyance could have avoided Steve's death in a car accident – but some simple business succession planning would have gone a long way to keeping the business strong and viable during the months following Steve's death.

All closely held businesses should consider business succession planning. While there are many solutions to a problem such as this, Steve and John would have been well served to create a buy-sell agreement.

This agreement, which is a legally enforceable contract, would have given John the ability to buy out Steve's stake in the business for a predetermined amount should Steve die or become incapacitated, leaving Johnny with no power to influence any business decisions whatsoever.

There are two basic types of buy-sell agreements: a cross-purchase agreement and an entity purchase agreement. In a cross-purchase agreement, each business partner owns a life insurance policy on the life of the other partner – providing immediate cash with which to buy out the partner's heirs, such as Johnny. In an entity purchase agreement, the business itself owns the life insurance policies on each partner. Typically, if there are three or more partners, an entity purchase agreement is the most inexpensive option for all involved.

An additional benefit of business succession planning is that the agreement can be structured in such a way as to allow the owners – through the business – to stuff the policies full of tax-deferred cash values. Why? Well, in the event that none of the partners die – which is usually the case – then they can use the cash-fat policies as retirement bonuses or to provide supplemental income and tax-free death benefits to their families once they ultimately enter retirement.

Given Steve's role in the business, it would also have made sense for the business to own a “key man” insurance policy on Steve's life. In this case, had this protection been available, John would have had enough money to immediately search for, and probably recruit, an experienced foreman already performing Steve's critical duties in another company. While the insurance wouldn't have mitigated John's pain of losing his best friend, it would've helped him replace Steve's business skills in a relatively short period of time. The premiums for the insurance

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West Central Region

The West Central Region of SBRN is steadily gaining membership (we've already had several new members sign up this year!) and we're very excited about our balanced programming this year. We'll be coordinating two lunch ladders per month and we're looking forward to our “After Hours Social.”

Our goal this year is to connect with more non-profit and government agencies in our area. We not only want to be a key referral source for the SBDC, but for other agencies in the area as well.

Here's to a successful 2008 for the West Central SBRN and every small business in Florida!

Krissy Alvarez
SBRN Coordinator, SBDC at USF

Southwest Region

SBRN Southwest Florida is excited about 2008! Membership is growing and we have our new Steering Committee in place. The focus for the year will be growing membership and enhancing benefits for existing members. The Steering Committee is dedicated to finding ways to increase referrals within the Network and to strengthen relationships throughout the Chapter.

Beginning in March, we have a new meeting place at The International Design Center in Estero, Florida. Our March meeting was a pure networking event where we took the time to enjoy our new surroundings. Our April meeting will feature local agencies that specialize in helping small business and in June, our Small Business Development Center will sponsor an Entrepreneur Workshop.

Lorna Kibbey
SBRN Coordinator, SBDC at FGCU

Northeast Region

SBRN of Northeast Florida is excited about another year of SBRN providing small business support statewide! Our membership keeps growing and we're looking to add even more to our group locally in 2008 by continuing our Clay, St. Johns and Nassau County meetings. Additionally we're planning on adding Gainesville and Ocala chapters this spring.

One recent development was the launch of our Speaker's Bureau. It's comprised of members who hold a passion for promoting SBRN, and exhibit some of the expertise available within our organization by it addressing professional groups on a variety of topics. We're using this group to promote awareness of our organization and all that we provide to small business owners in Florida.

We're gearing up for the statewide meeting in Daytona Beach and we hope to see you all there!

Marice Hague
SBRN Coordinator, SBDC at UNF

Central Region

The ringing in of a new year often brings new energy and, for Central Florida's SBRN membership, this sentiment was definitely the case. In January, SBRN Central Florida started 2008 with a membership drive, which led to five new members for the opening quarter. That may seem like a small number compared to Jacksonville's large membership pool but for Central Florida, this number represents 13% of our membership. With these new members and with a year of operation under our belt, our network is thriving and the success stories from members and clients are starting to be told.

What's next? We think more of the same. Central Florida will continue to attract potential members and strengthen the foundation of professionals to serve our small business community.

Despite still talking about the New Year, summer is just around the corner and we're excited about the opportunity to meet our fellow SBRN members across the state at the FSBDCN's Annual Conference in June. See you in Daytona!

Kellie Staith
Program Manager, SBDC at UCF

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CERTIFIED APPRAISALS, INSPECTIONS & INVENTORY

NEW BUSINESS OWNERS TAKE ADVANTAGE OF THE HOTTEST AND MOST LUCRATIVE FRANCHISES IN 2008

By Marshall Reddy • Franchise Consultant

Potential business owners looking to start new businesses in 2008 should investigate the possibility of opening a franchise. According to FranNet, a national premier network of franchise consultants, franchise businesses experienced a growth of 33% from 2000 to 2006. And that growth is projected to continue into 2008.

There's good reason for this growth. Franchising provides a tested marketing and operational strategy that can be easily replicated. Basically, a new franchise owner doesn't need to go through the trial and error of making a business profitable, when the franchisor has already done the initial legwork. This makes franchising a popular way to get started for many investors and prospective business owners.

While franchises in general are proven business investments, there are certain industries that are especially hot right now. These franchise industries have a positive appeal in 2008, and are likely to have a strong demand in services for the next 15 to 20 years.

FranNet lists the following types of franchise businesses as "hot" for 2008 and beyond:

Senior Care Services – Our society is aging. In fact, 36 million Americans were 65 and older in 2003, but by 2030 this population will likely increase to 71 million. As our population ages, baby boomers will need assistance in a variety of different ways, from house cleaning to yard work to companionship to nursing care. All sorts of franchises geared toward our senior population exist. Examples include durable medical supplies and equipment, personal assistance, and nursing care.

Personal Care Services – Just because baby boomers age, doesn't mean they want to look like they're aging. And they typically have money to spend on services to keep them looking young and fit. But it's not just baby boomers who seek out these services. This industry is fast growing and focuses on a large population of people, including young professionals and busy families. There are a variety of personal care franchises that cater to these people, including massage spas, salons, family fitness centers, and skin-treatment clinics (think botox and laser).



Children's Educational Services – Parents are always seeking a competitive edge for their kids, and they're eager to pay professionals to help their children succeed in learning. Franchises focusing on test preparation, tutoring, college placement consulting, assessments and even specialty learning (i.e., children's cooking courses) are in demand right now.

Online Auction Processors – One man's trash is another man's treasure. That rings true for people who buy and sell on eBay and other online auctions and outlets. Online selling, on eBay or one of its competitors, is doing quite well. But not everyone is up-to-speed on setting up and selling on an online auction. So, there's a new wave of franchises that can step in and help sellers get their products online and out the door. This industry is lucrative and expedites the entire online sales process.

Food – Everyone needs to eat and there are a number of food franchises to satisfy any palate. Find



them in shopping malls, on street corners, in gas stations – anywhere there's solid foot traffic. New concept food franchises are doing very well because people like to try things that are new and unique when it comes to eating. Food franchises that are hot right now include fast and healthy meal preparation centers, organic food stores, trendy coffee and smoothie shops, and gourmet grocery stores.

Home Improvement Services – There's a boom in the home improvement industry and many franchises have stepped in to offer these types of services. With the increase in real estate values, many homeowners don't want to move, or simply can't afford to. So they're tapping into their equity to remodel, upgrade or add on to their existing homes. This concept puts home improvement franchises in the right position to help these homeowners. The home improvement franchises in most demand are easy, we-come-to-you services that can quickly transform a home or living space.

Pets – Oh, how we Americans love our pets! It's estimated that pet owners spend more than \$35 billion annually on items and services for their dogs, cats, reptiles, fish, etc. This means big money for franchise owners who hop on the pet bandwagon. Some franchises doing well in this area include walking services, pet day care centers, pet supply stores, gourmet pet food and gifts, and mobile and retail grooming services.



With so many hot franchises to choose from, people investigating a new business can be easily overwhelmed. That's where a knowledgeable consultant can help sort out the pros and cons of each franchise.

Marshall Reddy is a franchise consultant with Franchise Network, Inc. He can be reached at (904) 280-1949 or at mreddy@frannet.com.

By Mark Patrick • CPA, Accounting Network

Next to the results of the national political races, the most covered news story recently has been how much money the treasury will release to millions of over-taxed Americans and how soon. Congress put a package of relief together in less than a month, and the President already signed it. Here are the details:

Starting in May, the Treasury will begin mailing checks to those of us who have already filed a 2007 income tax return with reported earned income. The rebate will be up to \$600 per taxpayer for those reporting qualifying income of at least \$3,000, and potentially an additional \$300 per child. Qualifying income is defined as earned income generally, social security (or railroad retirement) benefits, and veterans' disability payments (including payments to survivors of disabled veterans).

Technically the payments are true rebates based on your 2008 income tax return. Since none of us currently knows what our 2008 income will be, the IRS will "estimate" it based on our 2007 tax return. Consequently, it's necessary to file a return for 2007 for them to determine eligibility. When it's time to file for 2008, there will be a reconciliation of the rebate received this year against what we actually qualify for on our 2008 income tax return. If the result of that return shows that an additional rebate is due, it will be reflected on that return. However, if it turns out that we were overpaid this year, the IRS will allow us to "keep the change."

Many who aren't normally required to file a federal tax return will be need to file for 2007, as they will **not be able to claim the refund without filing a return**. All rebate checks will be issued between May 1 and December 31, 2008, and only after your 2007 tax return has been processed. If you don't file timely or don't file at all, you can claim your rebate on your 2008 Form 1040.

Here are some examples of how much your rebate could be.

1. If your earned income is at least \$3,000 and your adjusted gross income (AGI) does not exceed \$75,000 or \$150,000 on a jointly filed return (MFJ) you will receive a rebate of \$600 (\$1,200 MFJ).
2. If you qualify for a child credit of any amount, your rebate will be increased by \$300 for each qualifying child.
3. If you receive Social Security benefits of at least \$3,000, you will receive a rebate using the same rules as item one above.
4. If you receive veteran's disability benefits you will also receive a rebate equivalent to item one.
5. If your AGI exceeds the previously noted amounts, there's a phase out based on 5% of the amount that exceeds these AGI limits.
6. Taxpayers issued ITIN's, called "IRS individual taxpayer identification

numbers" to alien individuals who aren't eligible for social security numbers are not eligible for any rebate.

7. Seventeen-year-olds do not qualify for the child credit, so if your child was a 16-year-old in 2007 you will not be entitled to the additional \$300 rebate, as that child will not qualify on your 2008 return. If a child qualifies you for the child credit in 2008, but did not qualify in 2007, you will be allowed to apply for the rebate on your 2008 return.

There are two other stimulus provisions in the bill. One increases the limit for expensing business equipment purchases in 2008 to \$250,000 plus offers a reprise of the 50% bonus depreciation rules of 2004 and 2005 for one year.

The second offers relief for those under foreclosure pressure on their home mortgage by basically doubling the lending guarantee limit by the FHA, using local indexes for that limit, and the FNMA and FNC mortgage purchasing limit to approximately the same amount. The intent of this law is to make it easier for victims of the sub prime mortgage calamity to refinance their loans.

As always, if you need assistance in understanding these new provisions or any other challenges with your income taxes or other financial questions, see your tax professional.

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