



A Glossary of Common Legal Terms in a Commercial Lease

The following terms and phrases are common in leases, particularly commercial leases. One might not find all of them in a lease, and, importantly, terms defined here may be explicitly defined differently in a particular lease (the definition in the particular lease would be controlling, not the definition provided below). For that reason, this glossary, though educational, is no substitute for retaining competent legal counsel. Endnotes that include the sources used in this glossary are provided after the definitions.¹

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Absolute Triple Net Lease: Also called a *bondable lease*, this is the most extreme type of net lease, where the tenant (also called “lessee”) is not only responsible for all the costs found in a triple net lease (*defined below*) but is also responsible for additional risks (*for example*, being required to rebuild the premises after a casualty, *regardless* of the adequacy of insurance proceeds, or being required to pay rent *even after* a partial or full condemnation of the leased premises).²

Accelerated Rent: Lease provision giving the landlord (also called “lessor”) the right to demand the entire balance of unpaid rent from the tenant/lessee under certain circumstances.

Additional Rent: Any costs for a tenant in addition to the base rent (*defined below*) (most often a share of the operating expenses) due to the landlord.

As-is: A term used to describe the state of the premises that exists upon landlord’s delivery, and tenant’s acceptance of the premises, in its present, unaltered, or improved condition.

Assignment: When the tenant vacates a property and turns over the premises for the remainder of the lease term to another party through a contract.

Base Rent: The minimum fixed rent due to the landlord under the terms of a lease agreement.

Broker: A guide to the local real estate market and neighborhood.

Brokerage Commission: Money that the landlord or tenant pays to the broker for various services related to the property.

Business Interruption: Insurance in case of a disaster and a disaster-related closing (ex. extended power outages). A policy usually will cover lost profits and operating expenses still being incurred.

Casualty and Liability Coverage: Casualty insurance covers injuries and crimes that occur on the premise. Liability insurance covers injuries on the premises caused by an owner or employee's acts or omissions or injuries caused by the tenant's product.

Certificate of Insurance: A document from the insurance company verifying your insurance coverage.

Commencement Date: The date on which the lease term begins. This date is often the day that the tenant takes possession of the leased premises and when the parties' obligations under the lease begin.

Commercial General Liability Insurance: Protects the tenant's business from lawsuits for physical injuries that arise from the tenant's business operations.

Default: A failure to perform a contractual obligation (ex. failure to pay rent on time).

Double Net Lease: Also known as a *net-net* or *NN*, this is a net lease where tenant typically pays base rent, real property taxes, and insurance costs.³

Escalations: Increases in rent above the base year. This can include a fixed amount each year, a percentage increase each year, or an increase based on the landlord's actual increase in expenses such as real estate taxes. These are typically explicit clauses in a lease.

Exclusivity Provision: An exclusivity provision prohibits the landlord from renting other premises in the building to a competing business.

Fair Market Rent: An estimate of what a reasonable tenant would be willing to pay a reasonable landlord for a given premises.

Form Lease: A template lease landlords use as the first draft of the lease. It will usually heavily favor the landlord's interests.

Fixtures: Anything you attach to the property that is fixed in place and would damage the property if removed (e.g. window treatments, built-in furniture, and some appliances like washing machines in a laundromat).

Free Rent: A period during which the tenant does not have to pay rent, typically if the premises is being developed or renovated during the lease term (after the Commencement Date, but before the Termination Date). It is also known as rent abatement.

Good Guy Guaranty: A lease provision that holds the premise's guarantor (e.g. the business owner) personally responsible for its obligations only while the business operates there. Once the business vacates the premises, the guarantor is no longer personally liable.

Gross Lease: A type of lease where the tenant pays rent to the landlord as a gross amount, which means that the tenant just pays one sum and is not required to pay additional rent to the landlord to cover expenses to the leased premises. The landlord pays all the property-related expenses, which include things like real estate taxes, insurance, and maintenance charges.⁴

Guarantor: A person who gives security for the tenant's debt or performance in case of default.⁵

Holdover: A tenant who continues to occupy the premises after the lease term has ended.

Indemnification: A promise to repay another party for future losses or damages.

Landlord: Can also be called "lessor," the party who is providing the premises that the lessee/tenant takes possession of to use.⁶

Landmarked Buildings: Property that you may not be able to make interior or exterior changes to without an approval process by the City.

Lease: "The transfer of absolute control and possession of property at an agreed rental."⁷

Lease Term: The period of time in which the landlord grants the tenant the right to possess and use the leased premises.

Lessee: See "Tenant."

Lessor: See "Landlord."

Letter of Credit: A letter from a bank or financial institution that can be a substitute to a cash security deposit. The letter guarantees that the bank will pay the security deposit if the tenant is unable to do so. The bank requires a fee and may require collateral such as a mortgage on your home.

Letter of Intent: A written agreement between the tenant and the landlord stating the intention of both parties to sign a lease and the essential terms of the lease (e.g., length, costs, construction).

License: A "license" is a personal, revocable, non-assignable privilege, conferred either by writing or parol, to do one or more acts upon the property *without possessing any interest* in the property. Unlike a lease, a license does *not* give the tenant exclusive possession of the property for a specified term.⁸

Lien: Claim against a property for an unpaid debt. For example, a construction company may place a lien against the property during a payment dispute.

Liquidated Damages: A lease provision that establishes a fixed amount of damages to be paid to the non-breaching party in the event the other party breaches a provision of the lease. The amount must be reasonably proportionate to the loss suffered as a result of the breach.⁹

Mitigation of Damages: A lease provision where the landlord agrees to minimize its losses and use reasonable efforts to re-lease the premises in the event the tenant vacates the premises before the lease expires.¹⁰

Net Lease: A lease where the tenant pays its base rent *and* additional rent to cover some or all of the expenses related to the leased real property. Typical expenses include taxes, insurance, and maintenance charges. The idea behind net leases is that they're meant to separate the costs of ownership from the costs of operation of the property. Thus, the landlord "nets" the rent. Net leases can be further classified as one of the following: single net lease; double net lease; triple net lease; or absolute triple net lease.¹¹

Operating Expenses: The costs of operating a building, including maintaining and insuring the building. A tenant may pay a share of these costs, often known as the Additional Rent.

Permitted Use: Lease provision describing how the space may be used.

Personal Guaranty: The promise by a business owner, or guarantor, to pay on a loan or contract in the case the business cannot.

Performance Obligation: Contractual obligation to deliver services such as repairs or improvements to a premises.

Premises: The space that a landlord leases to a tenant.

Property Insurance: A policy that repays a property owner for loss of or damages to personal property. Examples of loss and damages include fire, theft, vandalism, and natural weather events.

Property Manager: A company hired by the landlord to manage the property. They handle tasks including the leasing process, collecting rent, and making repairs.

Rider: Attachment to the lease that adds, clarifies, or replaces lease terms in the "form" lease.

Security Deposit: A deposit of cash or non-cash alternative the tenant gives to landlord to secure performance of a lease throughout the lease term.

Self-Help Evictions: A lease provision that permits a commercial landlord to re-enter the leased premises to re-take possession, after the tenant defaults, without using the court.¹²

Single Net Lease: A commercial *net lease* where the tenant typically pays base rent and real property taxes.¹³

Sublet: When a tenant leases part or all of a space to another party for a period of time during the lease term.

Submeter: A system for measuring utility usage, such as electricity, by a tenant in a building with multiple tenants.

Summary Proceeding(s): Summary proceedings are special proceedings to recover possession of real property. They are the primary way a landlord, owner, or sublessor of real property evicts a tenant or other occupant and are begun in state courts across New York. However, a tenant can also bring a summary proceeding against its landlord if the tenant has been illegally locked out of the leased premises.¹⁴

Tenant: Can also be called “lessee,” the person/party who enters into possession of the property of another party, ordinarily designated the “landlord” or “lessor.”

Tenant Improvement Allowance: Amount the landlord will pay for the tenant to renovate or alter the premises.

Tenant Representative: Professional hired by the potential tenant to represent only the tenant’s interests when negotiating with a landlord.

Trade Fixture: Removable personal property that a tenant attaches to a space for business purposes. Examples include a display counter or kitchen equipment.

Termination Right: A provision that allows the tenant to terminate the lease when a certain condition is met. For example, if a restaurant is unable to secure a liquor license.

Triple Net Lease: Also known as the *net-net-net* or *NNN*, it is a type of net lease where the tenant pays base rent and additional rent to reimburse the landlord for the costs associated with the operation, repair, and maintenance of the building and any common areas, costs which typically include real property taxes, building insurance, and maintenance costs. The paradigmatic triple net lease is where a tenant will rent an *entire freestanding commercial building and pays for all property expenses*. The landlord is “netting” the base rent, and the landlord does not have to spend money on property expenses or obligations.¹⁵

Yellowstone Injunction: Most leases provide for premature termination when tenant has been properly notified of an alleged default and fails to cure it. A *Yellowstone* injunction asks the court to pause the “curing period” or grant

additional time to cure the defect, giving the tenant the opportunity to challenge the sufficiency or accuracy of the landlord's notice or resolve the underlying dispute.¹⁶

Zoning Restriction: Limits to how property owners and tenants can use space. They are generally residential, commercial, and manufacturing.

¹ Please note that unless otherwise cited, the definitions of the glossary terms come from NYC SMALL BUSINESS SERVICES, COMPREHENSIVE GUIDE TO COMMERCIAL LEASING IN NEW YORK CITY (2018), <https://www1.nyc.gov/assets/sbs/downloads/pdf/about/reports/commercial-lease-guide-accessible.pdf>.

² *Absolute Triple Net Lease*, THOMSON REUTERS PRACTICAL LAW GLOSSARY (2018), <https://us.practicallaw.thomsonreuters.com/6-502-4026>.

³ *Double Net Lease*, Thomson Reuters Practical Law Glossary (2018), <https://us.practicallaw.thomsonreuters.com/1-502-4019>.

⁴ *Gross Lease*, Thomson Reuters Practical Law Glossary (2018), <https://us.practicallaw.thomsonreuters.com/8-503-9140>.

⁵ *Guarantor*, Black's Law Dictionary (10th ed. 2014), available at Westlaw BLACKS.

⁶ ROBERT F. DOLAN, 1 N.Y. LANDLORD & TENANT INCL. SUMMARY PROC. § 1:1 (5th ed.).

⁷ *Feder v. Caliguira*, 171 N.E.2d 316, 318 (N.Y. 1960).

⁸ *Roman Catholic Church of Our Lady of Sorrows v. Prince Realty Management, LLC*, 850 N.Y.S.2d 569 (2d Dep't 2008).

⁹ Adam Leitman Bailey & John M. Desidero, *The Essential Guide to the Most Important Clause in a Commercial Lease: The Default Clause* (3d ed. 2017).

¹⁰ *Id.*

¹¹ *Net Lease*, Thomson Reuters Practical Law Glossary (2018), <https://us.practicallaw.thomsonreuters.com/9-502-3983>.

¹² Adam Leitman Bailey & John M. Desidero, *The Essential Guide to the Most Important Clause in a Commercial Lease: The Default Clause* (3d ed. 2017).

¹³ *Single Net Lease*, Thomson Reuters Practical Law Glossary (2018), <https://us.practicallaw.thomsonreuters.com/3-502-4018>.

¹⁴ See N.Y. REAL PROP. ACTS. LAW art. 7 (McKinney 2018); Hon. Gerald Lebovits & Michael B. Terk, *A Guide to New York State Commercial Landlord-Tenant Law and Procedure--Part I*, 87 Feb. N.Y. St. B. J. 22 (2015).

¹⁵ *Triple Net Lease*, Thomson Reuters Practical Law Glossary (2018), <https://us.practicallaw.thomsonreuters.com/9-502-4020>.

¹⁶ *First Nat. Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 237 N.E.2d 868 (N.Y. 1968); *159 MP Corp. v. Redbridge Bedford, LLC*, 71 N.Y.S.3d 87 (2d Dep't 2018).