



# Is the *Deck Stacked* Against Commercial Tenants?



**Q:** What do high-stakes poker and commercial real estate have in common?



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**A:** In both, a lot of money is on the line, each takes years of practice to master, and those that understand the rules, nuances and success strategies are the most likely to succeed.

So here are seven rules that business owners, health care practitioners and corporate decision-makers should use to increase the odds of leasing space at the lowest rate, with the greatest concessions and the most favorable terms and conditions.

**Tenant Rule #1: Become Fully Informed**

Being fully informed means that you or your representative need to: 1. Learn the size and asking price of every suitable vacancy in your target area. 2. Research the prices paid and concessions obtained by similar tenants. 3. Identify the landlords who have the greatest urgency to lease space.

**Tenant Rule #2: Refuse to Pay “Market” Rate**

The term “market” rate is not the amount tenants should pay for space. It’s merely the landlord’s asking rate, and fails to take into account any negotiated reductions or concessions. Insight: Neither landlords nor their agents expect to get the asking rate.

**Tenant Rule #3: Negotiate Everything**

Regardless of the size of the leased premises, every term of a commercial lease should be evaluated based on how it affects the overall cost of the transaction and the rights and obligations of the tenant. In addition to the rental rate, other terms that should be negotiated are as follows: the lease term, the amount and frequency of rental escalations, early termination provisions, leasable size, warranted maintenance and repairs, guarantees, options to extend, building signage, parking, tenant improvements, building hours, operating expenses, assignment and subletting, transferability, and other terms unique to individual transactions.

**Tenant Rule #4: Establish a Budget for Rent ... and Stick to It.**

Rent is the second largest expense most businesses incur. Remember, every dollar saved in excess rent is a dollar that can be spent on employee salaries and benefits, growing the business, or saving for retirement. Tip: Before signing the lease agreement, calculate the total cost of rent and operating expenses over the entire term of the lease, including option

periods. It may become clear that buying a building is a wiser investment than helping to pay off the landlord’s mortgage.

**Tenant Rule #5: Keep Your Circumstances Private**

Real estate agents and property managers are the eyes and ears of the owner and have a fiduciary duty to protect the landlord’s financial interests. As such, everything disclosed to them will be shared with the owner—and used against you at negotiating time. While they are generally friendly people, they’re not your “bff” (or “bf” or even your “f”). Tip: Be mindful that listing agents and property managers are required to answer only the questions you ask, not the questions you should have asked.

**Tenant Rule #6: Never Agree to a Dual Agency**

This is the real estate industry’s dirty little secret. A dual agency exists when one or more agents from the same company represent both tenant and landlord in the same transaction. Remarkably, the real estate industry does not prohibit this obvious and unavoidable conflict of interest as long as the parties (tenant and landlord) agree in writing to the arrangement before any discussions have occurred. In practice, such a properly documented meeting of the minds is rare. Tip: Dual agencies always favor the landlord and, in my opinion, are inherently unethical.

**Tenant Rule #7: Get Value from Your Half of the Commission**

Most commercial real estate leases include a commission which is paid by the landlord to the listing agent, who generally splits it with the agent representing the tenant. If you represent yourself, the listing agent retains the entire commission amount. Insight: Although the property owner writes the commission check, it’s the tenant that ultimately pays the tab. Make certain you receive value from your portion of the commission by selecting an experienced, unbiased, fully credentialed advisor to protect your interests. After all, you’re paying for it.

Is the deck stacked against commercial tenants? Only for the uninformed and unrepresented. By practicing the seven tenant rules you’ll separate yourself from the group that overpays for space but doesn’t realize it until after the lease is signed! ■

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