# Class 5 – Key Terms

Lease –

Right to possession, use, enjoyment –

**Lessor** – Owner of the property.

**Lessee** – Tenant of the property, not the owner.

Why is most business real estate leased?

* More cost-effective than owning
  + Owning would require a large commitment of capital to purchase.
  + A purchase would “put the user in the real estate business,” That is, the tenant would have to take the risk of owning and also have the real estate business “know how” to lease, collect rent, maintain, and insure the property.
* Owning would reduce operating flexibility.
* Removes focus from its core business activities by having to maintain the property, etc.

Residential v. Commercial -

**Elements of a Typical Lease:**

**Parties** – Namely the lessor and lessee. The date of the lease agreement, occupancy date, identification of area to be leased, and the length of the lease term.

**Rent** – The base or minimum rent and any methods that will be used to calculate and adjust future rent. Description of any concessions and other inducements to be provided to the tenant by the landlord.

**Security Deposit** – Deposits and any indemnities and guarantees from third parties or co-signers.

**Condition of the Property** – Condition of the leased premises to be provided to the occupant on the move-in date, including any tenant improvements.

**Uses for the Property** – Allowable uses of the property, restrictions on occupancy, and prohibitions regarding future changes in the use of the property.

**Payment of Expenses** – The responsibility for payment of specific expenses by the lessee and/or the lessor.

**Assignment / Subletting** – Any restrictions on assignment or subletting of any of the leased space by the tenant.

**Common Area Maintenance (CAM)** – Responsibility for maintenance and repair of the tenant’s space and of the general premises.

**Alterations** – Any restrictions on alterations or improvements to the property by the tenant.

**Default / Remedies**

**Insurance**

**Renewal Options**

**Guarantees**

**Types of Rent Structure**

**Flat Rate** – Rent maintains the same (or flat) for the term of the lease.

**Step-Up / Rent Escalation Clause** – Provides that rent will increase at the end of a specified time interval and in specific amounts during the term of the lease.

**Percentage Based** – Rent may be fully or partially determined by an indicator of retail sales performance. For example, some leases in shopping centers may include a provision for rent to be partially based on the tenant’s sales volume.

Rentable vs. Usable Area –

Lease Term:

Fixed Term -

Month-to-month lease term -

At Will -

At Sufferance –

Renewal Option –

Holdover –

Payment of Expenses / Common Area

**Gross / Full Service Lease** – The tenant pays rent only and the property owner provides all services and pays all operating expenses.

**Expense stop** – In order to establish a base line of recoverable expenses at the time the tenant takes occupancy, the lease will generally specify that tenants will pay only a share of increases in recoverable expenses in excess of what is referred to as an expense stop.

**Pass-Through:**

**Single Net** – The tenant pays rent and pays for all operating expenses identified in the lease.

**Double Net** – The tenant pays rent and all operating expenses directly. In addition, the owner “passes through” non-operating expenses such as property taxes and insurance costs to the tenant.

**Triple Net** – Agrees to pay a certain recurring capital outlay for repairs, alterations, and modifications to the interior of the leased building space.

Types of commercial tenant properties

Office -

Industrial / warehouse -

Retail -

Types of Commercial Lease Clauses

**Use** - Tenants must keep the current and future number of employees per square foot at an agreed level.

**Right of First Refusal** – Tenants may have the right to rent contiguous space and/or any space in the building when it becomes available.

Exclusivity / Non-Compete -

Continuous Operation -

**Signage** – Grant one or more tenants the right to display a name inside and/or outside of the building.

**Parking** – Property owner must reserve and/or keep a specified minimum number of spaces relative to rentable square feet currently in the building and relative to leasable space to be constructed in the future.

Landlord reps & Warranties:

Covenant of quiet enjoyment -

Warranty of habitability / suitability -

Maintenance of common areas -

Tenant responsibilities:

Payment of Rent -

Duty not to commit waste -

Constructive Eviction –

Wrongful Eviction –

Retaliatory Eviction –

Security Deposit –

Normal Wear and tear –

Tenant vs. Occupant –

Assignment vs. Subletting -