

Take precautions when signing retail lease

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Q. I am considering opening a retail business, but I am concerned about agreeing to a long-term lease. How can I protect my assets?

There are a number of different methods a tenant can employ to limit its risk and liability under a lease, but most are subject to negotiations with the landlord.

As a preliminary matter, the tenant under your lease should be a legal entity that protects you from personal liability, such as a corporation or limited liability company. As a condition of placing an entity (as opposed to an individual) on the lease, the landlord may require a personal guaranty, but you may be able to negotiate limitations on the duration and extent of the liability of the guarantor.

If you are concerned sales from your new venture may not be robust enough to support the amount of rent under the lease, you can request the right to terminate the lease if your sales do not reach a certain minimum threshold during a given period of time.

If the landlord agrees, it is likely to require that you substantiate the amount of your sales and provide adequate advance notice of the actual date of lease termination.

Another alternative is to seek to obtain a right to terminate the lease prior to the expiration date at a pre-negotiated "buy out" price. The price is often based upon some portion of the costs the

landlord incurred to enter into your lease and the amount the landlord is likely to expend to enter into a new lease with a substitute tenant.

You should consult with an attorney to determine the best course of action in your particular circumstances.

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