

# The "Golden Rules" of Negotiating Retail Leases

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What are "Golden Rules"? We define Golden Rules as principles that guide our actions. They can be in the form of principles of how we operate our business or an outline of a position to take in different situations.

Typically, articles written about negotiating commercial leases focus on the negotiations from the viewpoint of either the landlord or the tenant. These articles also tend to focus on the current status of the most frequently negotiated business terms. These business terms tend to vary dramatically depending on factors such as the state of the economy, vacancy rates, and many others. This Update, however, will instead focus on a couple of Golden Rules we commit to and believe should be adhered to when negotiating a lease regardless of whether you are a landlord, a tenant, or in a landlord or tenant favorable environment.

**Golden Rule: Develop A System to Properly Prioritize Important Terms.** It is critical that landlords and tenants develop a system and list of priorities before negotiations commence. This allows the parties to more efficiently and effectively analyze the profitability of the deal and manage risk.

For example, a tenant is often going to be more concerned about negotiating the appropriate lease term due to concerns about establishing goodwill at a location or maximizing signage rights. Landlords may be more concerned about requiring continuous operations by prohibiting a tenant's "go dark" rights.

**Golden Rule: The Goal for Both Landlords and Tenants Should Be to Achieve Mutually Beneficial and Commercially Reasonable Terms.** While there are certainly exceptions to this Golden Rule, most landlords and tenants should strive to negotiate lease terms that are mutually beneficial and commercially reasonable in the circumstances. Negotiations focused on commercially reasonable and mutually beneficial terms will usually result in more efficient and timely completion of negotiations. For a landlord, it will result in increased tenant goodwill and an enhanced reputation with tenant brokers.

**Golden Rule: What Goes Around Comes Around.** The pendulum of lease negotiations swings frequently and often times very dramatically. The last decade is strong evidence of this. While both landlords and tenants want a "good deal", each should also consider the effect of their negotiating strategy on their long-term business plan. All of the parties should act in a courteous and respectful manner throughout the course of the deal because you never know when you may be on the other end of that communication.

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