

# USE CLAUSE AND EXCLUSIVE CLAUSE

## USE CLAUSE

With respect to a use clause, there is a distinction between retail and office leases. In a retail setting a landlord wants control of the shopping environment. In an office setting a landlord may only want to prohibit certain uses that can be burdensome on a building or other tenants.

For example, in a shopping center, the tenant may want to have the exclusive right to sell a certain type of merchandise, however the landlord may not want to give the tenant that right so the landlord can lease spaces to similar tenants.

A use clause in a commercial real estate lease is an essential provision that specifies the allowed activities or businesses within a leased space. This clause dictates how the tenant can use the property, ensuring that the intended use is in compliance with zoning regulations and aligns with the landlord's overall vision for the property.

### Permissive Use Clause

A permissive use clause states how a tenant can use the space and prohibits most other activities. Any activities not explicitly permitted by the use clause are prohibited. Tenants typically prefer broad language in a use clause to allow for future flexibility and potential subletting while landlords often seek narrower definitions to maintain control of their property and prevent misuse by a tenant. The following is an example of a permissible use clause.

"The tenant shall use the leased premises solely for the operation of a retail shoe store and shall not use the premises for any other purpose, including but not limited to, storage, manufacturing, or residential use."

### Restrictive Use Clause

A restrictive use clause prohibits a tenant from using the space in certain ways, defining what the tenant is not allowed to do. For example, in a shopping center a tenant may have an exclusive use so other tenants are restricted in how they may use a leased space. The following is an example of a restrictive use clause.

***"The tenant shall not use the leased premises for the purpose of selling coffee, shakes, fries or any use that is illegal, immoral, or offensive, or that constitutes a nuisance or disturbance to other tenants or occupants of the property."***

### Exclusive Use Clause

An exclusive use clause gives a tenant the sole right to operate a specific business in their leased space. This prevents the landlord from leasing nearby space to competitive businesses. Exclusivity can increase the value of the space for the tenant as they have a secure market for their business. For instance, a pizza place might have an exclusive use clause that stops any other restaurant from selling pizza.

Why use clauses are important in commercial leases  
Use clauses in commercial leases are crucial because they outline the authorized activities on the leased property, making certain that tenants' operations align with the landlord's vision and the property's intended use. These clauses are essential for preserving the property's value, they protect against disruptions, and create a harmonious landlord-tenant environment.

While tenants may prefer more flexibility, a well-drafted use clause is essential for maintaining a harmonious and legally compliant commercial relationship.

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