

Selling Your Practice? Check That Lease Carefully!

By

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In a previous article I told prospective buyers about Dr. Bob in Atlanta who was bitten by an incompetent lease review. He had purchased a practice with what he thought was long-term occupancy security guaranteed by multiple lease renewal options. As it turned out, unbeknownst to Bob, there was a provision in the lease stating that the renewal options were personal to the original tenant and, therefore, not transferable to him. Neither Bob nor his attorney had caught that stipulation. As a result, just when he thought that he was ready to start the next five year term, the landlord informed Bob that he had no options to renew and forced him to accept a new lease with more stringent rental terms. Since Bob's only alternative was to relocate and incur a huge expense to build out a new facility, he had little choice but to agree to the new lease terms. He was extremely lucky that the landlord didn't force him out the door.

As a seller, what lease issues should you review to insure that there are no provisions that may impede the sale of your practice? Here are just a few:

- Assignability: Is the lease, in fact, transferable? The lease may state that you do not have the right to pass your lease on to another party. Or, it may say that the landlord agrees not to unreasonably withhold consent to an assignment of the lease - with one specific exception that may be revealed upon careful reading: upon requesting consent, the landlord has the right to terminate the lease. Each of those scenarios results similarly. The practice you hope to sell is significantly devalued because you can't guaranty your buyer a ready-made location within which to operate the practice.
- Length of Term: How much time remains in the current term? Are there renewal options? How many and of what length? Are they transferable to your buyer? Even if the lease is assignable, without the ability to guaranty the buyer long-term occupancy through multiple renewal options, the investment you hope they will make in your practice is at great risk. It would be foolhardy for anyone to purchase your practice without some guaranty that they can remain in your already improved and established facility long enough to achieve a good return on that investment.
- Change of Conditions: Does the landlord have the right to impose changes in the rental terms as a condition to granting you the right to assign your lease? Where your buyer may find the rental terms attractive, if the landlord has the right to raise the rent, or take away some parking privileges or reduce the number of future options or even the future right to (re)assign the lease to another party then, again, the practice you hope to sell is significantly devalued because you can't guaranty your buyer that he or she will have the benefit of the current lease terms.

So what can you do if you find that one or more of these conditions exist? You can attempt to renegotiate the lease in the hope of eliminating these obstacles. The landlord may or may not cooperate. He or she has no obligation to even discuss changes with you. The degree to which he may cooperate will be a function of supply and demand at that time and whether or not he perceives it to be in his interest to make any changes in the lease. He may agree to the changes you seek - in exchange for things of benefit to him.

Whether you engage an attorney or a professional lease negotiation expert to review the lease and assist with renegotiation, make sure that person has the necessary experience to accomplish this most important task in order to prevent your practice sale plans from being derailed by unattractive lease terms.

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