

Buying a Practice? Check That Lease Carefully!

By

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Dr. Bob in Atlanta was very excited. After 4 years of toiling for someone else, he had finally put together enough money to open his own office and, almost magically he had found a terrific practice that was for sale right in his home town at a very reasonable price. It was the right size, in a great location with plenty of parking. And the best part, it was all built out exactly as he needed so he wouldn't have to spend a fortune on leasehold improvements. He was very excited about being his own boss and controlling his own destiny. After examining all the documents, he had an attorney take one last look at everything and Bob was told that it all seemed to be in order. So he took a deep breath and signed the papers. What an exciting moment!

It seemed that all of the years of study and hard work were finally going to pay off for Bob, just as he'd imagined. Ah, but 'twas not to be quite so. Just 14 months after he took over the practice and everything was humming along nicely, Bob received a letter from the landlord stating that his lease was set to expire six months later. Bob was stunned. The landlord's notice went on to say that, if Bob wished to stay in the property, he would be subject to new lease terms, including a substantial increase in rent. Bob was confounded because he knew that the lease he had assumed provided multiple renewal options and he had just recently complied with the lease requirement to send a renewal notice to the landlord for another five-year term. In a panic he called the landlord and was told that the renewal options embedded in the lease were personal to the original tenant and, therefore, not transferable to him. He was directed to the pertinent language in the lease and, sure enough, there it was, hidden away in an obscure provision that apparently both he and his attorney had overlooked. Bob was crestfallen.

In effect, when Bob purchased the practice, the lease that he assumed only granted him occupancy rights for that 20-month portion of the five-year lease period remaining when he bought the practice. The multiple renewal options he had seen while reviewing the lease he now realized were absolutely worthless, as they weren't transferable to him. The landlord had him in a box.

Needless to say, Bob was chagrined - and angry. Angry at himself and also at his attorney, as neither of them had caught that restriction when reviewing the documents. So, unhappily, he was forced to accept the landlord's new terms. In reality, he got off lightly because the landlord could very well have held him up for even more stringent rental terms or worse, kicked him out of the building rather than offer him another lease. Had he been forced out, relocation would have been extremely costly and would have been an economic catastrophe for Bob. Luckily, he escaped what might otherwise have been a disastrous scenario by the grace of a reasonable landlord.

So how did this happen. It's simple. Bob had tried to save money by hiring a neophyte attorney upon whom he relied to ferret out the salient aspects of the lease as part of the document review. What he had failed to do, however, was establish that the attorney had sufficient experience with commercial leases to know what to look for in the lease and the attorney had missed this very important restriction. Bob assumed, as many of us do, that all attorneys are equal and that they all know everything. The reality is that law school alone doesn't a good attorney make. Experience is what matters most. As it turns out, the attorney had done several practice purchase transactions, but had been wholly inadequate to the task of reviewing one of the most critical documents effecting Bob's business.

How could Bob have avoided this unfortunate turn of events? Simply by assuring that the lease review was done by a sufficiently experienced lease expert. So take heed. Whether you engage an attorney or a professional lease negotiation expert to review the lease, make sure that person has the necessary experience to accomplish this most important task in order to avoid being put in the landlord's box.

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