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Avoid assuming a medical lease upon practice acquisition

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When a medical or dental professional is ready to buy a practice, there are numerous legal and business considerations that must be evaluated. Perhaps surprisingly, one of the most pivotal issues that inevitably will arise during the acquisition process doesn't have much to do with the amiability of the seller or the strength of the practice. Rather, it is whether to take over the seller's lease of the office space or enter into a new lease with the landlord. It's certainly easy to understand why many medical and dental professionals decide to assume the current lease. After all, who wouldn't want to avoid the hassle of additional negotiations, with an entirely new entity, during an already stressful time of life? However, there are several benefits to starting fresh that make the endeavor well worth the effort, and which one cannot assume the professional before her took the time to do.

The following are a few high-level provisions you should take the time to negotiate in to, or out of, the lease on behalf of your client.

Relocation clauses should be treated as nonstarters. A relocation clause, if exercised by the landlord, will force the practice to move its office location to another part of the building. True, the practice generally will be assured the same square footage and may even be given an allowance from the landlord to build the space out to meet the practice's specifications.

However, that's generally where the good news ends. First, build-outs take time. That's time when patients either cannot be seen or when patients must endure the mess and noise of renovations. In either case, it will invariably result in lost income, patient frustration and may even cause several patients to walk away entirely. Second, there are other qualities besides square footage that generally aren't considered by standard relocation language. Is the new space in the back of the building and therefore hard to see from the street? Does the new space get the same foot traffic? Does the new space have adequate lighting or is it in the middle of the building with no windows? Is the new space equally accessible to patients with limited mobility?

These are all issues that will turn away patients and that aren't particularly fixable. And finally, patients just generally don't like change. So, in all, one of the first things that should be negotiated out of a lease is the relocation clause. If the landlord is unwilling to take it out, consider walking away from the deal. If your client is unwilling to walk away from the acquisition of the practice, negotiate the revision of the relocation clause so that it is expensive for the landlord to exercise. For instance, add a liquidated damages clause for harm suffered by the business due to the move. You also could add language requiring the new space to be of the "same quality," which is a "squishy" enough term to capture a variety of potential deficiencies of the new space.

Landlord change-over can be a real headache for any tenant. A new landlord will inevitably want to do something differently and almost always will bring along new building management. Whether these changes are a good thing or a bad thing, there will inevitably be some level of business disruption. To give your client the option to avoid the issue entirely, ask the landlord for a right of first refusal. If the landlord agrees, this will give your client the chance to purchase the property if the landlord ever decides to sell it. Keep in mind that this is most applicable to single-tenant buildings.

If the lease contains a "make good" clause, which is sometimes called a "dentist clause," either negotiate its removal or, at a minimum, shift some of the cost back to the landlord. This type of clause requires a dental practice, upon the expiration of the lease, to remove all fixtures and other improvements specific to dental practice so that the landlord may lease the space to a wider range of tenants. It's not unreasonable for a landlord to want such a clause. However, this can be a costly endeavor for the vacating dentist. If the landlord will not agree to remove the clause entirely, ask the landlord to pay a certain amount of the costs associated with the removal, up to a negotiated cap. This will afford at least some relief. While this type of provision is specific to dental professionals, this advice might be applicable to certain types of medical practices, such as those with specialized equipment.

Finally, make sure the new lease is assignable. While this may seem obvious, form or boiler plate leases often will have very restrictive assignability provisions or outright prohibit assignment. While it is certainly a good idea to negotiate the lease directly with the landlord during the acquisition process, as this article discusses, it won't always be an option. In five, 10 or 20 years, when it is time to sell the practice, an inability to assume the then-current lease could be a deal-breaker for some buyers. Don't place your client in that position by overlooking this simple provision.

Ultimately, every lease will be at least a little bit different. But, generally speaking, every lease will, in its first iteration, be more favorable for the landlord. Therefore, it is always a good idea to take the time to personalize the lease to your client's business needs.▲