

Aspects of a Commercial Lease

The commercial leases which doctors often enter into can have lengthy and complicated provisions which result in important legal implications. Although the length and complexity of these types of leases can vary significantly, there are at least ten (10) significant aspects of any commercial lease which should be carefully analyzed. Those factors are summarized below:

1. Parties to the Lease – It is important to clearly understand the identity of the parties who are legally liable under the lease. The identity of a party directly influences other parties' abilities to commence or pursue legal action to enforce the lease. Leases may establish legal liability in the individual capacity of a named party or in the capacity of other types of legal entities, such as corporations, limited liability companies, or partnerships. It is not only important to ascertain the actual identity of a party, but also determine what jurisdiction (state or county) and form of proceeding (mediation, arbitration, or litigation) may be available to enforce a party's rights under the lease against another party who may have violated the lease. It is often advantageous for the tenant/lessee to execute the agreement in any legal capacity other than his or her individual capacity. In those cases, the landlord/lessor will often require the individual to personally guaranty or insure compliance with the terms of the lease.

Particular attention should also be given to determine whether legal obligations extend to any guarantor or third party insuring tenant's compliance with the lease provisions. In most cases, the guarantor will have the same legal liabilities as the tenant.

2. Term of Lease – Unlike residential leases, commercial leases usually extend for longer periods of time such as three (3) to seven (7) years. The party entering into the lease should give particular attention to three aspects dealing with the terms of the lease:

- a. A tenant may want to incorporate language permitting the withdrawal from the lease before the end of the term in certain circumstances.
- b. As an alternative to a longer lease, the tenant may want the option to simply extend or renew the lease period after an initial lease term. The tenant should seek exclusive right to renew the lease upon written notice to the landlord made a designated number of days before the end of a lease period. Attention should be given to the number of times that the lease can be renewed and the period of time that the lease can be extended during each renewal.
- c. A tenant should insure the ability to sublease or assign all or a portion of the leased space during the lease term. This ability to sublet or assign is usually provided by the landlord provided there is advanced notice and an acceptable, alternative tenant.

3. Rental Charges – Most commercial leases operate on the basis of a “triple net” lease. Under this form of lease, the tenant is responsible for a variety of payments which constitute the total rent for the commercial space. Each of the parts of the triple net lease, referenced below, should be carefully reviewed.

- a. Regular Monthly Rent – The lease will typically have the basic monthly rent which is based upon the amount of space used by the tenant. This

monthly rent is negotiable and often increases over the term of the lease. The renter may wish to include language restricting the percentage increase in the base amount of the rent during the course of the lease. Tenants should also be aware that many leases impose increased interest on delinquent rent or may require the tenant to pay legal fees should there be a default in the payment of rent.

- b. Taxes – Commercial leases often require the tenant to pay an appropriate percentage of the real estate taxes and special assessments on the commercial property. Careful attention should be given to the computation of the amount owed and the time when such payment is made to the landlord. Tenants should avoid paying for any late fees, charges, or special assessments which are not related to the underlying tax bill on the property.
 - c. Common Area & Maintenance Charges (“CAM” Charges) – Tenants usually pay an appropriate percentage of maintenance and utility charges associated with the common areas of the property, such as, the lobby and parking facilities. Careful attention should be given to the items of such “CAM” expenses which the tenant is responsible for paying and the timing when such amount may be due to the landlord. It is also important to address the possibility that the landlord may construct additional common areas in the future which will result in increased “CAM” charges.
4. Permitted Use – The lease will often specify the uses or activities which the tenant can perform on the lease premises. Chiropractors should be certain that all

adjunct services and ancillary services/sales which may be contemplated in the future can actually be permitted on the leased premises. Particular attention should be given to insure that the ancillary services of other professionals within the practice are permitted on the property and that sales of certain items such as supplements and back support devices are permitted.

5. Signage – Careful attention should be given to the provisions of the lease relating to the location, nature, size and scope of any signage or any other advertising on the commercial property. Leases often contain prohibitions from the landlord which must be carefully scrutinized in order to insure that the doctor has adequate signage and advertising capacity at the property.

6. Noncompete Clauses – The tenant may wish to include a provision of the lease which prohibits the landlord from renting to another tenant who may be in “competition” with the chiropractor. The doctor will need to project ahead to insure that only appropriate tenants are similarly occupying the building. Particular attention should be given to those businesses which may be unreasonably noisy, sell products which are not contiguous to the doctor’s practice, or businesses/restaurants which emanate odors which are not contiguous to a successful practice.

7. Utilities and Maintenance Fees – Commercial leases should detail the utility expenses and maintenance costs which are the exclusive responsibility of the tenant. Generally, the tenant is responsible for all utility service to the particular leased premises and will not be responsible for any expenses occurring outside the leased space. A lease should indicate that any expenses which are not designated will be the responsibility of the landlord.

8. Improvements (“buildouts”) and Alterations – Many problems develop when the parties to the lease do not carefully designate the nature and cost of any improvements or alterations to the leased premises which must occur before or during the lease. A lease should have the detailed exhibit carefully delineating which parties are responsible for such items. In planning ahead for possible expansion, a doctor renting space should also add provisions permitting the first option to expand into leasehold spaces which are otherwise available in the commercial building.

9. Parking and Outside Facilities – The tenant must always insure that there is adequate parking for patients and staff. Many leases designate the location of such parking spaces and the areas where trash/storage may be placed outside of the building. The doctor must insure that there is adequate parking under zoning regulations and that there is appropriate placement of refuse and other items which are conducive to building a successful practice.

10. Liability and Insurance – Most commercial leases will contain clauses requiring the tenant to maintain certain basic levels of business insurance coverage. In addition, leases often contain conditions requiring a party to be responsible for any personal or property damage resulting from intentional conduct of employees, agents, or representatives. A tenant should insure that there is a fair balance of liability on the part of the landlord for damages suffered by the tenant. It is recommended that these provisions are reviewed by an insurance agent and legal representative.

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