New Strategies to Protect Yourself when Negotiating or Renewing Your Dental Office Lease—Part 2

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(This is the second of a three-part series.)

In last month’s first installment in this three-part series, we saw that during challenging economic times (such as that which the dental profession is currently confronting), the terms and provisions of your dental office lease contribute significantly to the financial success of your dental practice. All office leases deal with issues such as (i) annual rent increases, (ii) the right to sublease or assign your dental office lease to another dentist who purchases your practice, (iii) the right to exercise an option to renew to remain in your premises at your election, (iv) the allocation of responsibility between you and the landlord for making and paying for repairs, and (v) the landlord's right to recapture or take back your premises should you decide to sell your dental practice.

Your or your dental real estate attorney’s discovering these hidden provisions in the lease, negotiating fairly these critical terms of your lease with the landlord, and being proactive in structuring your lease to address your long term professional and financial needs are a prerequisite for securing a fair lease and establishing a satisfactory landlord-tenant relationship.

Your right to assign or sublet your dental office. Many dentists contemplate bringing in an associate dentist, entering into space-sharing or solo-group relationships to reduce costs, or assigning or subletting their premises to another dentist when they sell their practice. Leases prohibit professionals other than you from occupying and utilizing the premises. Most leases also provide that any rent payments, money, or “other consideration” earned by you from the space-sharing relationship must be paid to the landlord. Leases also provide that any “value” attributed to your office lease in your practice purchase agreement upon the sale of your practice must be paid to the landlord. Be cognizant of lease clauses permitting the landlord to raise the office rent, to increase substantially the security deposit, or to withhold arbitrarily the landlord's consent to any requested assignment of your lease to another dentist. All of these provisions can work a financial hardship on you because the landlord has reserved the right (i) to change the economic provisions of your lease or (ii) to derive some or all of the economic benefit from your space-sharing or practice sale transaction. A careful perusal of this part of your lease by your dental real estate attorney and the deletion of this onerous provision before you sign your lease will save you much stress in years to come.

Options to renew. Options to renew your lease give you the right to stay for an additional period of time (e.g., 3 years) in your premises without having to obligate yourself if you later wish to relocate. Make sure your lease permits your options to renew to be exercisable by any subsequent dentist to whom you assign your office lease and
not just you as the original tenant. Second, make provisions for determining the rent in
the option to renew. (For example, the option period rent being the last year's rent
increased by the CPI or the rent being the "fair market rent" for other dental space
similarly situated in comparable buildings for that area). Lastly, make sure that you are
given ample time before the end of your lease term to exercise your option to renew
(e.g., a period of six months to notify the landlord of your intent).

The next issue will address pass-through of operating expenses to the tenant and
recapture of premises by the landlord.

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