



# BusinessBite

Practice Management Information for Implant Dentists

## ***"New Strategies to Protect Yourself when Negotiating or Renewing Your Dental Office Lease-Part 3"***

by Law Offices of Barry H. Josselson, A Professional Law Corporation\*  
(This is the last of a three-part series.)

In the prior two installments 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

***Pass through of operating expenses to tenant.*** Many leases pass through operating expenses of the building or shopping center to the tenant for reimbursement to the landlord. Study carefully your lease to determine if some, most, or all of the operating expenses are *passed through to you* and what items *remain the landlord's sole responsibility* (e.g., repairs to the roof, foundation, or exterior walls).

When comparing multiple locations from which to choose your ideal dental office, each prospective landlord needs to provide you with its track record of operating expenses and the amount of costs borne by each tenant throughout the year. Try to "carve out" certain identifiable capital expenditures which remain the landlord's responsibility (e.g., roof, foundation, or exterior walls). Or try to put a cap or ceiling on certain capital expenditures incurred by the landlord and for which you may be responsible (e.g., heating, ventilation, and air conditioning systems). Or you may wish to *negotiate a warranty given by the landlord that certain equipment will be and remain in good operating condition for a specified period of time* and during such period the landlord shall be financially responsible for repairs.

The most important factor is to know in advance what repair items are your financial responsibility, and what expenses remain the landlord's obligation to pay. Then, try either to shift certain repairs back to the landlord or to place a dollar ceiling beyond which you will not be liable when paying for such repairs.

***Recapture of premises by landlord.*** Many leases provide that the landlord may *take back*, "recapture", or *reacquire* the premises *merely upon your request* to the landlord to sublease or assign the office to another dentist. Please note that this right by the landlord to take back the premises is **not** predicated upon your being in default or in breach of the lease. Instead, even if you are in perfect compliance with the lease, many leases provide the landlord with the right to regain the premises subsequent to your notifying the landlord of your intent to sell your practice or to sublet any part of your office to another dentist. *Protect yourself from this onerous provision by deleting it from your document.*

All of the recommendations in this three-part series should be employed to make your lease fairer. *All leases are drafted in favor of the landlord* because they have been prepared by the landlord's legal counsel. The only question is whether such lease has been prepared slightly, moderately, or extremely in favor of the landlord. Your and your dental real estate attorney's responsibility is to make it equitable for both you and the landlord.

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