



Negotiating the lease

A favourable facility lease is a fundamental ingredient of a successful practice.

The ultimate practice value is determined to a large degree by the quality of the premise lease. It makes good economic sense to retain an expert who specializes in negotiating leases for doctors, to secure the very best possible facility lease for your practice situation.

Following are issues that need to be addressed to ensure you have a solid lease agreement with your landlord:

1. All leases are in the landlord's favour. In spite of the landlord's assertion that this is a standard lease, and that other tenants in the building have signed it, review the document thoroughly, and consider that every paragraph is negotiable. Keep in mind that a doctor is a Triple A tenant, which is why a professional building with doctors is more valuable than a building with other commercial tenants.
2. Most rents are based on a triple net or minimum rent. In addition, the lease calls for the payment of your pro rata share of the operating costs of the building. Review the operating costs to ensure they are reasonable and that the total square footage on which the calculation of the operating costs is based is reasonable. For instance, if there are vacancies in the building, make sure that the landlord does not push the operating costs relating to the vacant premises onto you and other current tenants.
3. Although leases can be short or long term, if you plan to practice in the location for an extended period of time, do your best to negotiate a long-term lease for 10 to 15 years. Build in as many options to renew as you can.
4. If you incur significant leasehold improvement costs, consider maximizing your tax deductions: Negotiate one lease term plus one renewal period within the first five years.

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5. Most renewal periods are between three and five years. The option to renew gives you great flexibility, so beware of the landlord who wants to limit your freedom. Make sure that the option to renew does not only apply to you as the current tenant, but that the same rights extend to the eventual purchaser of the practice.
6. Check what the new lease rates will be when the lease is renewed. The landlord may ask that the rent be the fair market value, but not be less than your current rate. This prevents you, in a falling leasing market, to renew at a lower rent. Make sure that the establishment of the renewal rate is subject to arbitration.
7. Ensure the lease is registered in the Land Titles office. This will protect your lease in case of a change of landlords.
8. Ensure the lease can be assigned to another doctor without any restraint. Look for a clause in the agreement that the landlord's consent to the assignment cannot be unreasonably withheld. The assignment should not trigger a significant fee or a drastic increase in the rent. Upon the assignment of the lease, ensure that you are released from any other personal covenants, or any further obligation to pay rent.
9. To insulate your practice from any claims by the landlord, you may want to choose a shell company as the tenant on the lease agreement. This holding company would not own any assets but would simply make the lease payments. The holding company can give you protection in case the landlord has a claim.
10. If you are going to be the only doctor practicing in the building or shopping centre, negotiate an exclusivity clause to limit the competition. This ultimately increases the value of your practice.

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11. The lease agreement may include a clause giving the landlord the right to relocate you from your existing premises to another office in the building. If the current location is critical to the success of your practice, do not accept the relocation clause. If you are amenable to the landlord having the option to relocate you, make sure that the costs to rebuild the premises, including all leasehold improvements and any disruption of income, is borne by the landlord.
12. Carefully analyze the damage and destruction clauses. If your office and/or building is destroyed by fire, and the landlord has a right to restore the premises, make sure that the repairs must be made within a reasonable period. If this is not clearly stated, then ensure you have the right to terminate the lease and find another location. You should not have any obligation to pay rent while the premises are being reconstructed.
13. Be aware of any provision that protects the landlord from any claims that your patients may have when they are injured on the premises as a result of the negligence of the landlord. Do not let the landlord off the hook for his obligation to compensate a patient for injuries. Do not agree to indemnify any claims the patient may have.
14. Because doctors carry on a personal service business, an early termination clause in the lease is advisable. It states that if the doctor wishes to retire, becomes disabled or dies, the lease can be terminated with relatively short notice. Ensure that the fee for terminating the lease is not prohibitive: two or three month's rent would be reasonable. Of course, you would only use this early termination clause if you cannot find a purchaser for the practice.
15. Include a provision in the lease permitting you to install signage for your practice.
16. Consider negotiating a provision that you have the exclusive use of a number of parking spaces for patients and staff.

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