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## **Your Property Lease ...Does It Contain Hidden Bombs with Long Fuses?**

By Robert Dick

Your commercial property lease is one of the most important business agreements you will negotiate during your career. Poorly negotiated leases can make it difficult for you to sell your practice, cost you thousands of pounds if you move, and leave you responsible for paying rent after you retire.

This probably applies to you. Most dentists who rent are fully aware of only one thing about their lease - the monthly rental fee.

They have no idea of the devils lurking in the details of the 20 to 50 pages of their lease that deal with matters other than rent payments. Most leases contain important clauses regarding the sale or transfer of your business. These clauses are hidden bombs that will explode only when you make a vital decision to move or retire.

### **There is no such thing as a tooth fairy ....or a Standard Lease**

Part of a landlord's strategy can involve lulling you into believing that you are signing a "standard" lease. In fact, many leases have the words "STANDARD LEASE" at the top of the first page as an invitation for you to believe that some higher authority has already reviewed and vetted the lease for fairness.

Don't believe it. There is nothing "standard" about lease documents. Even tenants in the same building and on the same floor are likely committed to different lease documents.

Landlords often present you with lengthy and difficult-to-interpret leases for a good reason. And it's not because they like giving money to their solicitors.

Another common tactic used by landlords is delaying re-negotiation of leases. With time running out, they encourage tenants to focus on the issue of rent payments. It isn't really a negotiation. Focusing on rents is a diversionary tactic. It's intended to prevent you from dealing with other key issues hidden in the lease.

Those key issues include assignment provisions, options to renew or extend, and the assumption of undefined personal financial obligations for the term of the lease.

### **Are you free to hand your lease over to the purchaser of your business?**

You want to be free to assign your tenant lease to the purchaser of your business.

Assignment provisions are a part of every lease. For all intents and purposes, this is the component of your lease that will determine your ability to sell your practice.

In the final months of their careers, many dentists have been shocked to discover, when they ask their landlord to assign the lease to a prospective buyer, that the request is turned down.

The Lease invariably states that assignment of the lease will not be 'unreasonable withheld or delayed'.....but gives numerous reasons why that approval may be withheld.

Stop and think about it. You have sold your business subject to a transfer of the lease, you advise the landlord of your intent to sell and boom! *The bomb goes off.*

Your landlord has advised that he is withholding consent because one of the 'reasons', unless you pay him some 'compensation'. It can potentially cost you hundreds of thousands of pounds to settle. If you choose not to pay out of principle, it could impede your ability to sell your business and you might have to relocate it in your final working days.

### **Insurance is a must but what about the practical situation?**

The Landlord should insure the building and as the tenant, you insure your equipment and furnishings.

Additionally the Landlord will also often take out insurance to cover for loss in rent due to fire, flood etc, as indeed you as the tenant should take out insurance to cover for loss in income in these circumstances.

This is good news for you because the lease will invariably state that should the property be unusable the tenant will not have to pay rent until the premises are habitable again.

The problem is:



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- that the landlord is often not bound to tell you when he is going to make a decision or how long it will take to complete the works
- that you are bound to recommence the obligations under the lease, including lease payments, when the premises are habitable.

So you aren't paying rent and you are receiving income from your insurance policy, BUT you are not able to make any plans. So what do you tell your staff and clients?

#### **Will you have to pay rent after retirement?**

Another significant issue you need to consider on the sale of your practice is that you will most likely remain liable for the payment of rent by the new owner. Most dentists tend to sign their leases personally.

As the original tenant, the landlord has to only look to you, the original tenant and all your personal assets in the event of a non-payment of rent by the new owner.

This is a sizable burden. It includes all the monthly rent that a new lease owner could default on for the remainder of the lease. If you are also agreeing to pay the landlord's legal costs in disputes, you can add those costs to your total financial exposure.

#### **What can you do about this?**

You are not powerless in this situation. When it comes to leases, everything is negotiable. Tenants who recognize that hidden bombs with long fuses are often tucked away in the details of a lease can take steps to protect themselves.

There are consultants specializing in negotiating leases. They will evaluate your lease and identify the parts of the lease that might impede your ability to sell your business or go smoothly into retirement, and negotiate a new lease that is more advantageous to you.

Timing is crucial. Tenants with leases expiring within two to three years should be developing a negotiating strategy designed to get a lease renewal that leaves them free to make career choices without paying penalties to the landlord.

Your lease document is one of the most important agreements you will ever enter into during your career as a dentist. If your lease contains hidden bombs that will go off when you retire or sell your practice, it's to your advantage to stamp out the slowly burning fuses well ahead of time.

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