

LEASE CONSIDERATIONS/CHECKLIST©

- RULE 1: Do not be afraid to negotiate on any terms such as:**
- A. Rental amount, free rent or other rent concessions especially in a soft market;
 - B. Tenant improvements (give list to Landlord and ask that he/she pay all or part of improvements, this is to be done *before* lease is signed);
 - C. Limitation on rent increases such as flat rate for several years or a maximum percentage increase each time rent is to increase if tied to the Consumer Price Index;
 - D. Obtain options to renew lease, i.e. if the initial term is five years, it is to your benefit to obtain two or three options to extend the loan for an additional two or three, five year periods - insure that option is worded so that specific rental rate or formula for rent increase is stated;
 - E. Obtain "right of first refusal" so that if Landlord wants to sell the building, he/she must notify you and allow you to match the offer and buy the building;
 - F. Remember - If you are financing the purchase of the optometry practice, the lease term (initial with options to renew) must equal or exceed the term of the loan.
- RULE 2: Determine exactly what costs in addition to rent are "passed through" to you as the tenant.**
- A. Typically tenant pays for utilities for the interior of the space;
 - B. Some leases pass on costs that the landlord is responsible for paying onto the tenant such as annual real estate taxes, costs of insuring the entire building and costs of maintaining the building (grounds keeping, lighting, painting, repaving parking lot). If your lease contains these types of "pass throughs", find out exactly what these costs are by definition and what the charges over the last several years have been.
 - C. Sometimes you can negotiate a monetary ceiling or cap on the pass through;
 - D. Determine exactly what formula these pass throughs are being calculated, i.e., are they determined on the square footage of the building (typical) or only on the square footage of the rented space (disadvantageous for tenant).
- RULE 3:** Make sure that the lease reads under an "Assignment/Subletting" clause that you as tenant have the right to assign or sublease the lease subject to Landlord's prior written approval. This is important so that you can eventually sell the practice or bring in a subtenant dentist to help share in the overhead expenses. In the event the lease prohibits assignments or subletting, then the clause needs to be changed to allow it. Look closely at this clause to insure that if you want to sublease or assign, the landlord does not then have the ability to increase your rent or otherwise change the terms of the lease.
- RULE 4: Other items to check:**
- A. Insurance - what is required from you to insure the interior of the office and what will it cost you (check with your insurance agent);
 - B. Are there restrictions in the use of the premises such as hours of the day or days of the week;
 - C. Review in lease what repairs you as tenant are responsible for - typically only items on the interior of space; with Landlord responsible for roof, air conditioning/heating, electrical, plumbing, windows, walls;
 - D. Contact other tenants in building to determine whether they are satisfied with building and Landlord or if there are problems with either.

- RULE 5:** Make sure that every agreement that you reach with your Landlord is confirmed in writing and either written into the lease or attached as an addendum with both parties signing the same. If it is not in writing, it will not be enforceable.
- RULE 6:** If you enter into a new lease as part of the purchase of a practice, do not give the signed lease to the Landlord until the escrow has closed on the purchase of the practice - otherwise you will be liable under the lease even if the practice purchase is not completed.
- RULE 7:** Remember - Health Care Professionals make the best tenants and your Landlord knows this and should want you as a tenant. Do not be timid about attempting to negotiate a better lease as to any of the above items or have your attorney do so for you.

✓ **Rental Rate**

- A. On square foot basis
- B. Is rent fixed for term of lease;
- C. Does rent increase on an annual basis by Consumer Price Index or other formula.

✓ **Term of Lease - (how long does the lease run)**

✓ **Option to Renew**

- A. Single or multiple options;
- B. If exercised, what is the rental rate:
 - i) Fixed
 - ii) Tied to Consumer Price Index
 - iii) Subject to negotiation
 - iv) Fair market value
 - v) If no agreement, subject to third party determination

✓ **Expense Pass-throughs - in addition to the rent, determine if you must pay:**

- A. Share of real estate taxes;
- B. Share of Landlord's insurance on the building;
- C. Share of Landlord's maintenance on the building;
- D. Share of Landlord's management of the building;
- E. Other hidden expenses.

✓ **Tenant Improvements**

- A. Specify in detail what is to be performed;
- B. Specify in detail who is to pay for improvements;
- C. Specify that improvements are to be done in a workmanship manner and that you have right to approve work;
- D. Specify that rent is not to be paid until the work is completed and approved by tenant;
- E. Specify that all construction permits are the responsibility of the Landlord and in the event of project shutdown due to permits, no rent will be due until the problem is resolved.