

## ONE SHEET OF PAPER A MEMORABLE CASE STUDY



Our firm recently undertook a premise lease analysis for a dentist preparing for retirement in about two years. The goal was to examine the lease for any restrictive clauses that could hinder his exit strategy.

The client provided the original lease, over 20 years old, along with the latest renewal agreement he had signed. These documents were comprehensive, presenting no significant issues.

However, without access to all historical renewal agreements, we had to rely on certain assumptions. A key assumption was that the landlord retained the right to terminate the lease due to a vaguely worded assignment clause in the original document. Though debatable, the presence of this clause significantly impacted the practice's marketability and could deter banks from offering financing.

We speculated that the landlord, possibly inexperienced at the time, might have used a generic lease template found online or opted not to hire legal counsel.

After submitting our report, the client managed to locate the missing documents, allowing for a more thorough analysis.

The Turning Point:

Remarkably, it was discovered that the original lease had been amended to clarify and secure the tenant's assignment rights, mitigating the previously identified concern. This crucial amendment was found in a single clause on one sheet of paper, signed by both parties.



This case highlights the vital importance of every document in lease agreements.

#### A Contrasting Outcome:

Conversely, another scenario saw a crucial document emerge late in the transaction, unveiling a severely punitive clause. This revelation was disastrous for our client, upsetting the purchaser, leading to the withdrawal of bank financing, and ultimately, the deal's failure.

The client, who had acquired the practice privately, believed all relevant documents had been disclosed by the previous owner. Whether due to oversight or deliberate omission, the lack of transparency had severe consequences.

#### The Role of Professional Intermediaries:

Though a broker might have detected this issue sooner, it's speculative to consider what might have been. Notably, reputable brokers, usually paid by sellers, are vital resources for buyers, who may become future sellers themselves. Due diligence is crucial, extending beyond the dental practice to the broker's qualifications. Without a broker, a buyer's legal and accounting teams become even more vital.

#### Advice for Tenants:

For those leasing office space, retaining every lease-related document is crucial. Ensure you have comprehensive documentation, including any correspondence with the landlord, organized and accessible.

Review these documents carefully. Many include recitals referencing amendments, renewals, or other modifications, which can be significant.

Do not become complacent due to friendly landlord-tenant relationships. Familiarity with your lease is crucial.

After gathering all relevant documents, digitize them and share copies with your legal counsel, appraiser, broker, and yourself. Consider also sharing them with a trusted individual, such as an office manager or spouse.

The Landemic™ is a trademark pending of ROI Corporation.

The critical nature of understanding premise leases is a recurring theme in my discussions, which I've termed the Landemic™. This issue is serious and can have profound financial implications during the exit phase of ownership.

My goal is to facilitate a dignified and profitable departure from your business.

Ready to explore more about landlord and lease issues, or discuss the Landemic™?

Reach out to me at 416-520-7420.

Have a landlord story to share? Send it my way, and I can feature it anonymously for our peers.

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