"KISS OF DEATH" LEASE CLAUSES

NEGOTIATE BEFORE IT'S TOO LATE!

When it comes to lease clauses, there are several:

1. Proceeds to landlord on sale,
2. Options to renew void on sale
3. Relocation
4. Termination for Demolition
5. Options not assignable
6. No options to renew or extend

Frequently we receive calls from tenants who have just been given notice that despite the long term, their lease will end in a matter of months. These people are in shock. They are certain that there must be some mistake, some misinterpretation of the lease. They believed they had a valid lease with a term plus option length extending several more years.

Less frequently we receive calls that the tenant has been advised by their landlord that they are relocating – in many cases at the tenant's expense. Imaging realizing that the cost you incurred to build your clinic is now lost, and you must pay even more to relocate to different and in many cases less desirable space.

Daily we receive calls from tenants trying to administer leases with either or both clauses because whether they are being invoked or not, these clauses severely impair the sale value of the clinics with which they are associated. Tenants typically are unaware that their lease contains an early termination mechanism until it is too late.

The early termination clause and the relocation clause are often found in the same lease; if there is one there is usually the other. They appear in one out of three leases we review, so each tenant reading this article has a 33 per cent chance of having at least one form of this problem. For example, if your landlord is Cadillac Fairview, Oxford, Morguard, SmartCentre, RioCan or Bentall, your lease has a form of one or both clauses. If you have a Dye and Durham Co. Limited Form No. 650.656 lease (look at the upper right corner), your "Kiss of Death" clauses are present in the last paragraph of page two. Lucky you.

Although the probability of either of these clauses being triggered can be relatively low, either one will cost a tenant

hundreds of thousands of dollars in practice value. The very presence can interfere with practice financing (related to a sale for example) because they effectively limit the term plus option length to the notice period.

The most nasty form is the early termination clause, which in practical terms says that if the landlord sells the property, or decides to "remodel" the property (and what is that?), or decides to renovate, or redevelop the property, the landlord may provide notice to tenant that regardless of anything else, the lease will end.

The triggering mechanisms are so broad and all-inclusive, the notice period so short, and compensation so negligible tenant in effect can be terminated at will, with no downside to landlord! Why would a landlord do this? In today's realty market, landlords are commonly selling and then re-tenanting developments, re-furbishing and then re-tenanting developments, or converting commercial developments to residential (condominium) developments. And they are using the early termination clause to control the existing tenancies to do so.

The second and as unfortunate clause is the relocation clause. In practical and general terms, this clause says that on certain notice, tenant, at tenants' expense, must relocate within the development. Typically, a tenant is given a period of a few months to develop and relocate into premises chosen by landlord – at tenant's expense. This clause is used by landlord to free up space for an alternate tenant landlord prefers, such as a larger tenant and/or one willing to pay more rent.

What happens to the tenant when either of these clauses is triggered is that they must build alternate premises in a noticeably abbreviated period at their own expense. Imagine completing site selection, offer to lease negotiation, lease negotiation, design, permitting, construction, and relocation within four months, at an overall cost typically of $300,000 to $500,000, not to mention patient loss. Bet that would change your holiday plans!

The ultimate solution is to either remove both clauses, or amend both clauses to benefit the tenant during the initial lease negotiation. The effect of removal is obvious, but imagine negotiating both clauses so that if triggered, the tenant benefits by having a new practice built, in a location of choice, on a comfortable timeline, at the landlord's expense!

You need to check your lease to determine if either of these clauses are contained, and if so plan to deal with them. In some instances, these clauses can be amended or deleted during the term, especially at renewal time.

If you are stuck with an unacceptable version of either of these clauses, you need to be aware of the triggering mechanisms and have a plan in place to react if the clause is implemented.

Contact us now to book a complimentary consultation to understand how our services can save your retirement.

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With 50+ years of combined experience, Realty Lease Consultants Inc. has helped dentists succeed for over 30 years. Ian Toms and Jennifer Madgett bring deep expertise in lease consulting and negotiations, ensuring clients navigate complex agreements with confidence.

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