

Know the details of medical space leases before negotiating

Many medical professionals might think that the terms and conditions important in a medical building lease would be similar to those of other types of commercial leases. That isn't the case.

In order to negotiate a successful medical building lease, several key elements are necessary that far surpass those of commercial leases in general. Two characteristics differentiate a medical lease from other commercial leases.

First, the tenant is responsible for interior build-out expenses, which involve a large capital investment ranging from \$60 to \$150 per square foot. Second, zoned parking requirements are different.

The following items are crucial to proper negotiation of a medical lease and must be included in a medical lease:

■ **Nondisturbance clause.** The landlord and the lender should agree upon the nondisturbance clause in the lease. Texas law states that in the event the owner loses the building to foreclosure, all leases within the building are void.

The new owner of the building can then submit a new lease at a much higher rate. Should that occur, the tenant is captive, either to the new owner for increased rent or to space availability elsewhere.

■ **10-year lease term.** The lease term should have two five-year renewal options at an agreed-upon fixed lease rate. This is necessary in order to protect the



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large capital investment for interior build-out. It also allows the medical tenant to amortize the improvements over a longer period of time.

This condition should always be agreed upon during negotiation of the initial lease prior to inception. Many times, the landlord will agree in order to maintain an uninterrupted income stream from a tenant with good credit.

Additionally, the landlord doesn't incur any further major expenses for interior build-out during the 10-year period.

■ **Subordination of landlord's lien.** In the event of tenant default, the landlord's lien allows the landlord to take possession of the premises and to sell the contents for unpaid amounts due. Vendors or lenders who have inventory or equipment within the premises can lose their ownership of these assets due to the tenant's default.

Should the landlord's lien not be subordinated, vendors or lenders may not make sales or installment loans to the tenant because they are at risk of not recovering their property. For this reason, it's crucial that the landlord's lien be subordinated to vendor or lender liens, thus encouraging installment loans to the tenant necessary for business operation.

■ **Relocation clause.** Many

landlords require the tenant to agree to a relocation clause, which states that the landlord has the right to relocate the tenant within the building, after a 30-day or 60-day notification.

The landlord may need this right if the lessee is positioned to inhibit the lease of a large block of space. Normally, the landlord is required to provide like kind and quality of space, along with a comparable position within the building.

The landlord should also be required to pay the tenant's moving expenses, cabling and infrastructure costs. Additionally, it's also important to negotiate the inclusion of a liquidated damage provision into the lease. This provision compensates the tenant and indicates a specified amount agreed upon by the tenant and the landlord for the tenant's business interruption and loss of business due to the relocation.

Once the stated penalty amount is agreed upon, the tenant won't be required to furnish proof of incurred damages, nor will this amount be contested.

■ **Mechanic's/materialman's lien.** The tenant should have the right to provide a bond for any disputed amount until a conflict with a supplier is resolved. The lease normally will state that the tenant is prohibited from creating any mechanic's/materialman's lien on the property.

Should a conflict between a contractor and a tenant occur at the time of build-out, the tenant will be forced to pay the disputed amount or be in default of his or

her lease. Once payment is made, resolution can be achieved by legal action.

Should the contractor or vendor go out of business, the tenant may never receive reimbursement for expenses incurred due to the conflict.

The goal of any negotiation is to satisfy the needs of all parties involved. A successful lease is one in which all terms and conditions are abided by during the term of the lease. In addition, all issues that could arise during the term of the lease are addressed, and resolution is agreed upon by the tenant and the landlord prior to its inception.

Simply stated, all possible future problems are addressed, and if they occur, there are no surprises as to their resolution. It's common knowledge that when a conflict occurs between two parties to a contract, the parties turn to their lease document for resolution.

It's of utmost importance that there be no ambiguity within any commercial lease contract, especially in the medical lease contract. The medical tenant stands to be at risk for loss of a significant capital investment if critical items aren't negotiated and included within the lease.

Always remember: There's no standard commercial lease contract, and you only get what you negotiate.

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