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The Pharmacy Lease

Outside of your purchase obligations to the drug wholesaler, the pharmacy business lease is the next largest variable expense you have with opportunity to amend at fixed intervals. For pharmacists, negotiating a lease can be difficult, first because they didn't teach you lease negotiations in pharmacy school and second because the landlord knows you want the site and will ask for certain concessions before leasing it to you...all laid out in the nicely packaged "typical lease" you will be asked to sign.

Tips to negotiating a fair lease

- Increase your bargaining power by the taking the necessary steps to familiarize yourself with the contents of a lease to avoid giving unfair advantage and controls to the landlord.
- Don't pinch pennies by trying to negotiate the lease yourself. Hire an attorney that understands your business and let them do the job you hired them to do – review and negotiate the lease.
- When the time comes to bargaining leave your emotions at home (think poker face). Enthusiasm or anger expressed to the landlord COULD cost you in unfair lease terms

Commonly Included Pharmacy Lease Provisions that MAY Require Negotiation

1. Abandonment of Premises
2. Alterations and Improvements
3. Assignment and Subletting
 - a. Key words
 - i. Assignor – offers assignment of existing lease
 - ii. Assignee – accepts assignment of existing lease
 - iii. Lessor – offers lease (the landlord)
 - iv. Lessee – accepts lease (the tenant)

- b. Most leases prohibit a tenant from assigning or subletting the premises and if you sell or transfer for example 50% or more of your pharmacy business this may be considered an assignment. **Without the landlord's permission, you may not be able to transfer the business to a potential buyer.**
 - c. Tenant Tips:
 - i. Specify reasonable conditions for assignment or subletting that are fair to both landlord and tenant.
 - ii. Make sure landlord's consent to assign or sublet the premises is not unreasonably held, for example more than 30 days
 - iii. Try to provide in the lease on assignment to be released from any further lease obligation. You don't want to continue to be a guarantor to the lease.
 - iv. Negotiate a provision that that allows the premises to be used for any legal purpose as long as it does not conflict with the exclusive use originally granted by the landlord. For example, if you sell your prescription files to nearby independent you want to be able to assign or sublet the location to a Verizon Wireless Cell Phone Distributor.
4. Attorney Fees
5. Commencements Date and Deposit
6. Condition of the Premises
7. Out Clause Contingencies
8. Cost of Living Rental Adjustments
9. Covenant of Quiet enjoyment
10. Damage by Fire or Other Casualty
11. Default by Landlord or Tenant
12. Description of Size of Premises
- a. Pay **ONLY** for the space you are leasing. Make certain the lease contains a clear and unambiguous description of the premises. The size of the premises should be equal to the net leasable space.
 - b. Tenant tip: Measure all the usable space yourself. Negotiate to define useable space as inside wall to wall and does NOT include common areas used by other tenants. Don't use go off of the landlords basic floor plans
13. Exclusivity – If you are in a strip mall, you don't want a chain or grocery store pharmacy to move in at the other end.
14. Expansion Rights
15. Guarantee of Tenant's Obligations
16. Indemnification
17. Ingress and Egress
18. Insurance Obligations by Tenant and landlord
19. Landlord's Consent or Approval

20. Landlord and Tenant Maintenance Obligations
21. Landlord's Right of Access
22. Late Charges
23. Maintenance and Repairs
24. Notices
25. Option to Purchase Premises
26. Option to Renew Lease
27. Parking
28. Plans and Specifications
29. Real Estate Taxes
30. Security Deposit and Prepaid Rent
31. Service and Utilities

32. Signage
 - a. Many leases, especially in strip malls have specific signage and graphics requirements. Before signing a lease you may wish to have the landlord sign off on the plans. Depending on location make sure your business is included on any center wide pylon signage or directory.
 - b. Tenant Tip: To avoid delays in approving appropriate signage you may wish to add a short separate paragraph at the end of the lease that provides the landlord automatically approve whatever the local governing body sanctions.

33. Subordination
34. Surrender of the Premises; Removal of Trade Fixtures
35. Use and Operation
36. Use of Common Areas
37. Use of Premises
38. Waiver of Trial by Jury
39. Visibility
40. Zoning; Restrictive Covenants

Understand the key provisions of a pharmacy lease prior to negotiating key provisions. Negotiating a lease takes time. Be patient. Don't worry when negotiations fall apart or reach a stalemate. Increase YOUR bargaining power, not that of the landlord.

The lease provisions listed are for discussion purposes only. Contact your attorney to create a lease that addresses your individual or business requirements. IN NO EVENT SHALL NCPA OR ITS AGENTS OR OFFICERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE INFORMATION PROVIDED.