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## Newsletter Article Reprint

### To Lease or Not to Lease

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A very important but usually overlooked item affecting the acquisition of a practice is the office lease. Without acceptable lease terms, a lender will not lend and a buyer will not buy – who would purchase a business without a secured location?

With a history of increasing dental practice values, some landlords are attempting to leverage the lease as a bargaining position to capture a portion of the purchase price from the seller. There is even a trend by corporate landlords to extract additional monies from their tenants.

Here's how it works. Most tenants or prospective tenants focus on the price of the rent. However, there may be additional hidden costs, usually in the form of common area maintenance fees (CAM) and passthrough expenses like insurance or real estate tax increases. Not only are these costs generally missed, there are other clauses that we have seen inserted, some of which can be extremely costly to the seller.

Specifically, we have become aware of lease assignment language that can prevent the sale of the practice or require a significant financial buy-out negotiation. In addition, we have read recapture clauses that can completely nullify a lease, prevent a sale and possibly cause your business to be homeless. If that's not enough, there have been instances where while you and your counsel have been diligent in negotiating and reviewing your lease, even requesting lease options, but that personal options may not be transferable to a prospective tenant.

How much could all of this cost? Lease clauses, when triggered with the right (or wrong) language could require anywhere between 25% – 75% of the earnings of the sale. While it may not come to the point where that much is paid as you may offer a settlement, keep in mind that it's entirely up to the landlord whether he accepts your proposition. The bottom line is that landlord knows that he is in control, and the lease terms put him there.

Have you read over your lease again, yet? Well, that's not all. There are many instances where a seller may not be released from liability on the lease after the sale, or the landlord may be permitted to adjust the rent to the new tenant. Above all, don't forget that the landlord may not be required to consent to the assignment.

The lease is an integral part of the sale of a professional practice – without it, there will be no sale. If you haven't re-read your lease yet, now's the time. If it's time to renegotiate or if you are in the process now, be sure you have representatives looking out for your long term interests.

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