

Your Company's Real Estate Lease As A Roadblock To Selling The Business

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Have you ever considered selling your business? If your company is a tenant with a lease, be careful. You may find out that your landlord is also your silent partner. This happens when business owners rush into a sale of the business without first understanding how their lease will affect the buyer. It's surprising but leases are one of the most common roadblocks in selling a business.

For example, suppose your lease has 1 year left and an option to renew for another 5 years or a total of 6 years. Here are some things you should understand before proceeding to sell:

- Is the lease assignable to a buyer with or without the landlord's prior approval?
- Is the lease terminated if the company is sold (the buyer would have to re-negotiate a new lease).
- Is a new lease based on "market rates" at the time of renewal or some other formula?
- If the company is "location sensitive" as in retail or hospitality, can additional renewal options be obtained and if so, at what added expense?
- If an existing lease is assignable – will it be acceptable to the bank that finances the sale? Often times, the bank requires that the lease term be the same as the loan term.
- If a landlord's unwillingness to co-operate results in a forced re-location of the business, who will be paying the re-location charges, the new tenant fit-up expenses etc.? Is this business worth the same price in a new location? Will the buyer seek a price concession?

Suppose you, as the owner of a restaurant, lease the premises and you decide to sell the business. A few weeks before closing, the buyer's attorney reviews the lease and determines that there is a provision requiring a new lease if the existing company/tenant is ever sold (many leases are written this way to enable the landlord to verify the creditworthiness of the new tenant/owner but there are other reasons as well).

Now suppose the landlord understands that the restaurant is being sold and that he is the only obstacle. What if the landlord decides to increase the buyer's rent by 25% or more? Or, what if new lease includes a new provision requiring the new tenant (buyer) to be responsible for the condition and upgrades to the parking lot and roof?

This latter issue arose last month in a deal I was working on in which a national restaurant franchisee sought to take over the lease of a competitor's site to secure larger space. The landlord agreed to terminate the existing lease but he is requiring the new tenant to re-pave the parking area and replace the roof at a cost of \$300,000 as a condition of his acceptance.

When entering into a lease arrangement for a business, company owners must always consider the lease implications relative to the sale of the business someday. This is especially important when the location of the business is critical. One should consider the lease term and renewal options relative to the future buyer of the business.