

Lease Agreement

“Matching terms provides continuity and a clean separation or renewal when the franchise agreement expires or is renewed.”



David Scott Levaton, Esq.

Protecting Yourself by Limiting Liability

Lastly, remember that assignments of a lease - and most contracts for that matter - do not release you from liability without specific language confirming your release. If this language is not present, an assignment stacks potential responsible parties but does not replace them (you will remain liable as will the new tenant). You don't want to get a call from the landlord two years after closing a franchise asking you to cover the new tenant's past-due rent. When you assign an agreement, always negotiate a release of your personal guaranty.

This article is intended as an overview of some areas of consideration, but there are many other nuances that can and should be factored in when negotiating your lease. The professionals you retain to guide you should spend the time to address your concerns and the unique nature of franchising.

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protections and use. These include:

Co-Tenancy Provisions: In bigger, anchored shopping centers, this clause allows your rent to drop if a major anchor tenant vacates its space and is not replaced in a set period of time.

Permitted Transfer Provisions: Allow you to transfer the lease to another franchisee or your franchisor without a fee or qualification by the landlord, no approval necessary.

Personal Guaranty Limits: Confines personal assets needed for security for payment of the lease obligations. Best practice is to limit the time frame to the first year or two, after which they expire.

Tailored Provisions: Provisions you craft which allow you to cancel the lease if you terminate the franchise agreement for any reason, limiting your losses to several months (buy-out provision) rather than years if you need to close an underperforming franchise.

Franchisor Requirements

Your franchisor may require a Franchisor Addendum be included in the lease providing the franchisor certain rights. This may include the right to receive default notices or any proposed amendments to the lease after signing, or conditional assignment of the lease, allowing them to take over the location.

The conditional assignment allows a franchisor to step into the lease under a certain set of circumstances, usually your default. It is advisable to limit those rights as much as possible; many are drafted allowing the franchisor to take over if you are in default, as opposed to termination. This provision should only provide rights in the most extreme instances, such as an uncontested termination.

Exclusive Uses

Exclusive uses allow you to be the sole provider of your franchised goods and services in the real estate center you lease from. These provisions keep predatory businesses away from your operation, and protect you from having to compete with a business just doors away. To accomplish this:

- ⇒ Keep the language in the exclusivity provision focused on what you do and sell;
- ⇒ Include language specifying what percentage of another tenant's business is considered competitive (i.e., if you sell milkshakes, no other business in the center can sell more than 10% of their gross revenue in milkshakes).
- ⇒ Craft the provision with remedies, so if there is a breach by any tenant, your rent is reduced by a certain percentage until the offender ceases action (this incentivizes the landlord to act).

Additionally, there are provisions that you may be able to negotiate into the lease, which add enhancements to your

and a clean separation or renewal when the franchise agreement expires or is renewed. This ensures that you won't have to re-negotiate a lease for a franchise that has only a year or so left, or be stuck in a lease for a franchise that since expired.

You should also consider breaking the term into manageable time frames, such as a 10-year term, drafted as 5 years with a 5-year option. The reality is that not all franchises succeed. While your franchisor may have the option to assume the lease if the unit is underperforming, they may not exercise that right. Therefore, it's a practical consideration to limit the length of time you may be exposed to rental payments if you have to close your doors. A shorter term lease with options allows you to better manage your liability.

LEASE CONSIDERATIONS FOR NEW FRANCHISEES

It's an exciting day when your Franchise Agreement is finally signed and you start looking for a location to lease.

Whether you are negotiating using the franchisor's guidelines, or working with a real estate broker, there are several key considerations unique to franchising that are important to factor in when drafting the terms of the lease.

Leases can be long and complicated documents. As with all long-term obligations and contracts, you should have

the lease reviewed by an attorney familiar with franchising. Your attorney will point out those provisions that can be altered or deleted to ensure you attain the most beneficial agreement. Here are some of the key negotiating points to consider when evaluating leases in a franchised business:

Managing the Term

The term of the lease is often overlooked as a key factor, but there are two things to watch for: 1) Matching the lease to the franchise term, and 2) Establishing a limited time-frame exit strategy.

The term of your lease should, with options, match the franchise agreement term. Matching terms provides continuity