

**"New Strategies to Protect Yourself when Negotiating or Renewing  
Your Dental Office Lease-Part 1"**

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(This is the first of a three-part series.)

During challenging economic times (such as that which the dental profession is currently confronting), the terms and provisions of your dental office lease contribute significantly to the financial success of your dental practice. All office leases deal with issues such as (i) annual rent increases, (ii) the right to sublease or assign your dental office lease to another dentist who purchases your practice, (iii) the right to exercise an option to renew to remain in your premises at your election, (iv) the allocation of responsibility between you and the landlord for making and paying for repairs, and (v) the landlord's right to recapture or take back your premises should you decide to sell your dental practice.

Your or your dental real estate attorney's discovering these hidden provisions in the lease, negotiating fairly these critical terms of your lease with the landlord, and being proactive in structuring your lease to address your long term professional and financial needs are a prerequisite for securing a fair lease and establishing a satisfactory landlord-tenant relationship.

**1. Annual rent increases.** Your rent payments have a diminished value each year to the landlord because of the eroding effects of inflation. Consequently, landlords provide for annual rent increases to maintain the original dollar value of their rent when the office lease commenced. Request, therefore, that your annual rent increase by the consumer price index and not by any fixed amount which exceeds the consumer price index. Many landlords increase rent by an amount that exceeds the inflation rate; however, if your lease provides that repairs and maintenance to your building are passed through to you and the other tenants, there is no compelling reason for the landlord to seek an annual increase over and above the annual inflation rate.

Be careful, also, of rent increase clauses which state that the annual increase shall be tied to inflation with a certain minimum guaranteed increase (e.g., 3%) and a certain maximum cap beyond which the rent shall not increase (e.g., 6%). Some landlords discreetly provide that the "cumulative" annual increases shall not be less than the minimum or greater than the maximum amounts listed in the lease. The word "cumulative" permits the landlord to add up and average all of the annual increases and, therefore, the maximum number stated in your lease does not provide you as much protection as you might think. For example, let's say your lease prohibits increases above 6% per year. In year 1, inflation is 2%; year 2, inflation is 2%; and in year 3, inflation explodes to 12%. You might think that your 6% ceiling would protect you; however, because the "cumulative" sum of the 3 years of inflation equals 16% (2% + 2% + 12%), the landlord could still increase your rent by 12% because the "cumulative" sum in the lease has averaged less than 6% per year (a total "cumulative" increase of 18% for the 3 year period in question is permitted). Review carefully your annual rent increase provisions.

The next issue will address your right to assign or sublet your dental office lease and options to renew.

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