

Importance of Negotiating Exclusivity, Expansion and Relocation Provisions in Health Care Leases

Article By:

Zlata Fayer

In our ongoing series, we have examined key negotiating points for tenants in triple net health care leases.

We also have offered suggestions for certain lease provisions designed to protect tenants from overreaching and unfair expenses, overly burdensome obligations, and ambiguous terms with respect to the rights and responsibilities of the parties. These suggestions are intended to result in efficient lease negotiations and favorable lease terms from a tenant's perspective. In our previous posts, we considered the importance of [negotiating initial terms and renewal terms](#), [operating expense provisions](#), [assignment and subletting terms](#), [maintenance and repair obligations](#), [holdover provisions](#) and [surrender terms](#), and [tenant improvement allowances](#). This latest blog post focuses on negotiating lease terms governing exclusivity, expansion and relocation. A tenant should carefully negotiate these terms in order to protect its interest in the leased premises during the term.

Exclusivity provisions protect a tenant's interest in leased premises by restricting landlords from leasing space in the same building or shopping center as tenant's space for a similar permitted use. These provisions are not only important for retail tenants but should be negotiated for by healthcare tenants as well. For example, a tenant that operates a dermatology practice in a shopping center may want to restrict landlord from leasing space to other tenants who provide many of the same services. It is also important to define what tenant's recourse is if landlord breaches the exclusivity or if another tenant operates outside of its permitted use in violation of the exclusivity provision. This may include a reduction in rent for a certain period of time while landlord attempts to resolve the violation, and eventually a termination right if landlord is unable to cause the rogue tenant to cease the violation.

Expansion provisions allow tenants the flexibility to expand into additional space that may become available for lease by landlord during the lease term, usually contiguous space or other space in the same building. Tenants should push for a right of first offer if such space should become available, even if the tenant is uncertain of what its future needs may be during the term. Negotiated rent and coterminous terms should be included in the lease.

Relocation rights on the part of a landlord allow the landlord to relocate a tenant to similar space in other areas of the shopping center of building. Tenants should push for no relocation right on the part

of landlord, especially if the leased space has been built out by or for tenant to meet specific needs of tenant's business. A relocation at any time during the term would likely result in an interruption to tenant's business, and in the case of healthcare tenants, inconvenience to patients. If a landlord will not agree to remove a relocation right, tenants should push for the right to occur only once during the term and only after the first several years so as to give tenant time to get its business running in the space. In all cases, tenants should ensure that these provisions define the relocation space as comparable in size and location (such as proximity to elevators and lobbies) and that landlord is responsible for building out the new space to the same condition as the original space at landlord's sole cost and expense. The landlord should also be expressly responsible for the costs of any updates to the tenant's stationary, signage and other incidental costs as a result of the relocation. A landlord's responsibility for costs in connection with a relocation should not be capped at any particular amount. A tenant should also reserve a termination right if the relocation space identified by the landlord is not reasonably satisfactory to the tenant, in which case landlord should be responsible to reimburse the tenant for the unamortized portion of any improvements to the premises paid for by the tenant.

In our next post, we will cover the importance of negotiating default and remedies and will offer suggestions for tenants to consider in order to protect their interests in the event of a default.

©2025 Epstein Becker & Green, P.C. All rights reserved.

National Law Review, Volume XIV, Number 304

Source URL: <https://natlawreview.com/article/importance-negotiating-exclusivity-expansion-and-relocation-provisions-health-care>