

GAINING A BETTER UNDERSTANDING OF LEASES

Leases can, and do, play a significant role in the buying or selling of businesses. It can be easy to overlook the topic of leases when focusing on the higher profile particulars of a business. However, leases are a common feature of many businesses and simply can't be ignored.

Leases and Working with Your Attorney

Whenever a small business is sold, it is common that leases play a major role. In general, there are three different types of leasing arrangements. (If you have any questions about your lease, then you should consult with your attorney. Please note that the advice contained in this article shouldn't be used as legal advice.)



Three Different Lease Options

In the next section, we will examine three of the most common types of leases. The sub-lease, new lease and assignment of lease all function in different ways. It is important to note that each of these three classes of leases can have differing complicating factors, which again underscores the value and importance of working with an attorney.

The Sub-Lease

The sub-lease, just as the name indicates, is a lease inside of a lease. Sellers are often permitted to sub-lease a property, which means that the seller serves as the landlord. It is key to note, however, that the initial landlord still has a binding agreement with the seller. Sub-leasing requires the permission of the initial landlord.

New Lease

If the previous lease on a property expires or is in need of significant change, a new lease is created. When creating a new lease, the buyer works directly with the landlord and terms are negotiated. It is customary to have an attorney draft the new lease.

Assignment of Lease

Assigning a lease is the most common type of lease used when selling a business. The assignment of a lease provides the buyer with use of the premises where the business currently exists; this works by having the seller “assign” all rights of the lease to the buyer. Once the assignment takes place, the business’s seller typically has no further rights. Also, it is common that the landlord will have wording in the contract that states the seller is still responsible for any part that the buyer doesn’t perform as expected.

Disclose All Lease Issues at the Beginning of the Sales Process

No one likes surprises. If there is a problem with your lease, then this is something that should be disclosed in the beginning of the sales process. Not having a stable place to locate your business can be a major problem and one that should usually be addressed before a business is placed for sale. Buyers don’t like instability and unknowns. Not having a firm location is definitely an issue that must be resolved.

Buyers want to see that you have made their transition from buyer to owner/operator as easy as possible. Providing clarity of issues, such as leasing, will help you attract a buyer and keep a buyer. Regardless of whether it is dealing with leasing issues or other key issues involved in buying or selling a business, working with an M&A broker can help you streamline the process and achieve optimal results.

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