Whether you are starting a dental practice from scratch or purchasing an existing dental practice, your commercial lease agreement will be a very important part of the process, not to mention a huge investment.

Before you sign a lease agreement and spend thousands of dollars over a five to 10-year period, you should seek legal counsel.

Lease commencement date

Once your lease is signed, you and the property owner have opposite goals. The property owner wants the lease to start as soon as possible so that you can begin paying rent immediately, even though your office space may still be under construction.

Conversely, the tenant wants to delay the payment of rent as long as possible in order to preserve capital. If your property owner or contractor is building out your office space, it is important that you give him/her detailed construction plans in order to avoid any type of construction problems or delays.

However, it is also very important to ensure that your payment of rent does not start until the construction work has passed inspection, and you receive a Certificate of Occupancy, which will allow you to occupy your office space and start seeing patients.

Many lease agreements provide that the build-out will be deemed complete when the contractor or architect certifies that the construction has been “substantially completed.” (An architect should be consulted before construction begins.)

If you receive a Certificate of Occupancy and certain construction items still need to be completed, this is usually called a “punch list” of items that will be completed by the contractor after your dental practice is open for business. If you are building out your office space, you should select the most-qualified contractor and negotiate an appropriate build-out period (i.e., generally 90 to 120 days).

You may also want to insert a “liquidated damages clause” in your construction contract, which states that if construction delays occur through no fault of your own and the opening of your practice is delayed, the contractor will pay your rent for a specified period of time or pay you a certain sum of money.

In addition, if your property owner is building out your dental office, you may seek free rent for a specified period of time if the construction is not completed within a specified period.

Rent increases

Nearly all lease agreements have a rent escalation clause, which states how much your rent will increase over the term of the lease. Escalation clauses may either be specifically outlined in the lease (i.e., rent increases 3 percent per year) or tied to an index, such as the Consumer Price Index (CPI). The best practice is to set an exact amount of rent you will pay each month over the term of the lease. Any type of yearly rent increase that is tied to an index is very unpredictable and can hinder the cash flow of a practice.

Rent during option periods

When negotiating your lease, you should always include an option period to renew your lease, and the option period should specify the exact amount of rent you will pay during the option period.

The lease agreement will usually contain one or two methods that will be used in order to calculate the amount of rent you will pay during the option period, which are: (1) rent increase that is tied to the CPI or (2) the prevailing market rent.

The option period should specifically state the rental period (usually five to 10 years), and the amount of rent you will pay for each option year (i.e., during months 61 thru 72, rent...
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Damage to office
What happens if your dental office is damaged by fire or some other casualty loss, and you are unable to occupy the building for four to six months? Needless to say, this could devastate your dental practice.

Many lease agreements impose no real obligation on the property owner to rebuild the damaged premises. In fact, most lease agreements give the property owner the greatest flexibility in determining whether or not to rebuild a damaged office space.

By contrast, the tenant is typically required to move back into the office space within a short period of time after the office space has been repaired.

Therefore, every lease should include a provision that will allow a tenant to terminate the lease if the property owner has not completed restoration of the office space within a specified period of time. As a precaution, a lease should contain the following requirements:

• That the property owner carry full replacement-cost insurance on the building.
• The property owner commence repairs within 50 days of the loss and complete the repairs within 120 days of the loss.
• The tenant may terminate the lease agreement if repairs are not completed within a specified period of time. In addition, as a tenant, you should always carry insurance to cover the cost of any type of tenant improvements and equipment.

Lease assignment upon sale of the practice
The property owner always has the option to grant or deny a tenant’s request for an assignment of an existing lease. Imagine if you enter into a contract to sell your dental practice, and your property owner will not assign your lease to the purchaser.

Ideally, a practice sale agreement should contain a clause that states the sale of the practice is contingent upon the property owner assigning your lease to the purchaser.

In today’s market, the growing trend is to hold a previous tenant liable for the terms of their existing lease agreement, even though a new tenant (the purchaser of a dental practice) is now occupying the space.

Other areas of concern
What happens to a tenant’s obligation under a lease agreement if a tenant dies or becomes disabled? Generally, a property owner will not permit a tenant or his/her estate to be absolved of liability in the event of death or disability.

In most cases, unless otherwise specified, a tenant or his/her estate will be required to pay the specified rent according to the terms of the lease agreement, even if a tenant dies or becomes disabled. Therefore, a tenant should always attempt to negotiate a release (“buy-out”) or termination of the lease in the event of his/her death or disability.

In addition, many leases contain relocation clauses that state a property owner may move a tenant to another location within the building or complex. As a result, a relocation clause must be carefully reviewed.

Summary
It is important to remember that the property owner or his/her attorney drafted the lease agreement. You should always seek legal advice before you sign a lease agreement.

As a tenant, if you fail to do your due diligence, it may be a very costly mistake.