



## Leasing and Licensing Space: The Dos and Don'ts

November 13, 2013

Karima Kanani

William Dahms

### **DISCLAIMER**

This Coffee Talk presentation is provided as an information service and is not meant to be taken as legal opinion or advice. Please do not act on the information provided in this presentation without seeking specific legal advice.

© Miller Thomson LLP, 2011 All Rights Reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its current state. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested at [healtheditor@millerthomson.com](mailto:healtheditor@millerthomson.com)

# Agenda

1. Regulatory Approvals
2. Lease vs. License
3. Key issues for landlords
4. Key issues for tenants

# Regulatory Approvals

- Who must seek regulatory approval?
  - Hospitals must seek approval to lease as landlord or tenant under the *Public Hospitals Act*
  - FHTs are not subject to regulatory approval requirement
    - but may need MOHLTC approval to obtain funding
  - Similarly, Health Service Providers may need LHIN funding approval
  - Other healthcare organizations may be subject to specific regulatory regimes
    - e.g. *Residential Tenancies Act (Care Homes)*, *Long-Term Care Homes legislation (Nursing Homes)*

# Regulatory Approvals

- Process for *Public Hospitals Act* approval:
  - Approvals triggered under the *Public Hospitals Act* require Minister approval
  - Approvals obtained pursuant to the guidelines set out in the “Sale and Lease of Hospital Property Protocol” available from the LHIN Liaison Branch
  - Any proposal from a Hospital as lessee or lessor must be submitted to the LHIN for review before approval from the Minister can be obtained

# Regulatory Approvals

- Hospital as Tenant
  - Section 4(2) of the *Public Hospitals Act* provides: “no institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation or use of the premises or place for that purpose.”
  - So, if leasing for purpose of a public hospital then approval required
  - Approval not required for satellite locations/premises not approved for use as a Public Hospital (i.e., separately operated)
    - e.g. community mental health programs  
doctor office space  
Supportive Housing

# Regulatory Approvals

- Hospital as Landlord
  - When space used for the purposes of a public hospital is leased to a third party Minister approval is required
  - Section 4(4) of the *Public Hospitals Act* provides: “no land, building, other premises or place or part thereof acquired or used for the purposes of a hospital shall be sold, leased, mortgaged or otherwise disposed of without the approval of the Minister.”
  - In our experience hospitals may license space in the hospital without having to obtain approval

# Lease vs License

- A Lease:
  - Creates a property interest that includes the right for the Tenant entity to possess the property
  - Relationship of Landlord and Tenant created
  - The *Commercial Tenancies Act* of Ontario applies (in most instances)

# Lease vs License

- A License:
  - Constitutes a contractual right to do something on a property, i.e. occupy; use
  - Relationship of Landlord and Tenant not created
  - No statutory protections provided to parties
  - Usually terminable on limited notice



# Key Issues - Landlords

- What does the Hospital “own”?
  - Land and Buildings: rights to lease (subject to regulatory requirements)
  - Building only: rights to sublease (subject to regulatory requirements and ground lease)
- Lease vs. License?

# Key Issues - Tenants

- Offer to Lease
  - The “starting point”
- Lease Provisions
  - Term of Lease
  - Amount of Rent – Basic/Minimum; Additional
  - What constitutes “Additional Rent”

# Key Issues - Tenants

- Lease Provisions (cont'd):
  - Maintenance and repair obligations
  - Right to Extend Term
  - Right to Terminate Lease Early
    - Loss of Ministry Funding
    - Loss of Designation under *Public Hospitals Act*

# Closing Remarks

- Be aware that approvals may or may not be required depending on who you are and what you use the space for
- When approvals are required, plan ahead – they will take time to acquire!
- Leases are often presented as standard documents but from a risk management perspective there are key areas for negotiation whether as tenant or landlord

# Thank You!

**Karima Kanani**

T: 416.595.7908

F: 416.595.8695

[kkanani@millerthomson.com](mailto:kkanani@millerthomson.com)

**William Dahms**

T: 519.593.3211

F: 519.743.2540

[wdahms@millerthomson.com](mailto:wdahms@millerthomson.com)

***Karima Kanani*** is a Partner in the Health Industry Practice Group at Miller Thomson LLP, Toronto, Ontario

***William Dahms*** is a Partner in the Real Estate Group at Miller Thomson LLP, Waterloo, Ontario

[www.millerthomson.com](http://www.millerthomson.com)

**Added experience. Added clarity. Added value.**

Follow us...



**Miller  
Thomson**  
lawyers | avocats