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
• 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!

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