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A Health Industry Seminar Series

Leasing Space: The Do's and Don'ts

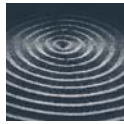
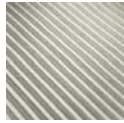
David Holmes and Karima Kanani
January 21, 2009

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AGENDA



- Regulatory approvals
- Key leasing issues for landlords
- Lease vs. License
- Key leasing 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 from the delegated ADM
 - Approvals are obtained pursuant to a process now involving the LHIN, LHIN Liaison Branch, and the Ministry
 - 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 purposes 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

KEY LEASING 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 differences

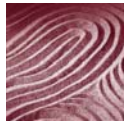
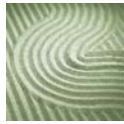
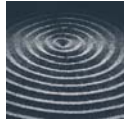
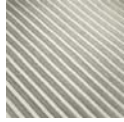
LEASE VS LICENSE

- 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

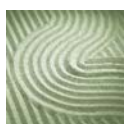
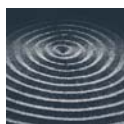
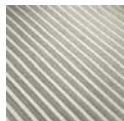
- A License:
 - Constitutes a contractual right to do something on a property, i.e. occupy; use
 - Relationship of Landlord and Tenant not created
 - No statutory protections provided to parties
 - Usually terminable on limited notice

KEY LEASING ISSUES - TENANTS



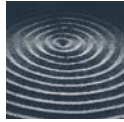
- Offer to Lease
 - The “starting point”
- Lease Provisions
 - Term of Lease
 - Amount of Rent – Basic/Minimum;
Additional
 - What constitutes “Additional Rent”

KEY LEASING 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*

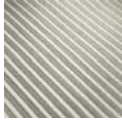
KEY LEASING ISSUES – TENANTS



- Lease Provisions (cont'd)
 - Damage and Destruction
 - Assignment and Subletting Provisions
 - Subleases and Ongoing obligations
 - Licensing Rights

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

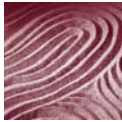
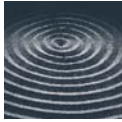


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