Leasing Space: 
The Do’s and Don’ts

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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
ten 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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