

You Have Invested in a **Pet Franchise**; What About the Lease?

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When someone invests in a franchise business that is retail, what is the significance of the lease to their business? Isn't the lease purely boilerplate and the only issues are the business terms such as the rent, square footage, length of the term, renewal periods, etc.? The answer to this question is "no". Let's explore the key provisions of any retail lease that a franchisee/tenant should consider.

A retail lease can be critical

to the success or failure of any retail business. In addition to the business terms that are typically negotiated by the franchisee with his or her local realtor and the landlord and his or her realtor or management firm, there are some significant legal provisions that can make a huge difference in the bottom line of a retail franchisee/tenant. For example, many leases often have a provision that allows a landlord to relocate the tenant's business to other parts of the shopping center or mall. Imagine if the

landlord demands that this relocation occur during your busiest time of the year. If you are a pet business franchisee, imagine if the relocation occurs where none of your customers can find you or where they cannot easily bring their pets into the store. What about the costs involved in the relocation? Who pays these? What is included in those costs; are signage and new marketing materials included, for example? This is just one provision in the lease out of many that is critical to any business.

Another key provision is the right to freely assign the lease to another franchisee or to the franchisor if you want to sell the business down the road. I recently represented a client who owned two (2) very high-end massage businesses that were franchises that she wanted to sell. The buyer and seller had agreed on all the key points, the legal documents were prepared for both and the attorney for the buyer and I had agreed on all the negotiated legal concerns. All that remained to a successful and fairly quick closing (which both parties wanted) was the landlords' approvals for both locations. We had not negotiated either of the leases involved in this transaction. In one case the landlord quickly approved the new buyers and consented to the assignment. In the other, the landlord negotiated the terms of the consent to assignment for over six (6) months holding up both transactions for that period of time. This holdup almost cost the deal for the seller as the buyer was getting ready to walk away. Making sure that the franchisee/tenant can freely (without costs or conditions that are unreasonable or prohibitive) assign a lease to a potential buyer is a key provision that is often overlooked. Without this type of provision, when the time comes that the franchisee/tenant is ready to sell the business it is



possible that the deal will not occur simply because the landlord does not approve the new buyer or because the conditions that the landlord sets are unreasonable.

One more example of a clause to negotiate in any retail lease, is the personal guaranty. There are many ways to limit a personal guaranty in a retail lease. Often a landlord will agree to a period of a full guaranty followed by a rolling guaranty of 12 or 24 months. For example, in a ten (10) year lease, a five (5) year guaranty followed by the remaining term having a twelve (12) month rolling guaranty is common. Many people assume this means that if there is a default in year four (4) of the lease that they are only personally liable for one (1) year of rental obligations. However, this is usually not the case. In most cases, this means that the franchisee/tenant is personally liable for six (6) years of rental obligations. In other words, during that first five (5) year period of the ten (10) year lease, the personal guaranty is a full, unlimited guaranty and it only becomes limited

after the 5th year. Another issue with a personal guaranty is making sure that it is released upon an approved assignment of the lease. Can you imagine selling your business to another franchisee and remaining personally responsible for the buyer's financial obligations under the lease? I cannot fathom anyone would willingly agree to that.

The above provisions are just a mere sampling of the many types of clauses in a typical retail lease that should be negotiated. A retail lease is a critical document to any franchisee/tenant and the business terms are just the beginning of the provisions that need to be negotiated. Contact Nancy Lanard, Esquire at Lanard and Associates, P.C. for more information.

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ABOUT THE AUTHOR

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