

Commercial Leases in Franchising, continued

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Negotiating Relocation Rights for Franchisees/Tenants

A relocation provision, in its simplest description, is a contractual right in a commercial lease that permits the landlord to relocate a tenant to another space. Relocation provisions are frequently overlooked when a potential tenant is negotiating the business points of a lease. However, signing a lease with an overly broad relocation provision can lead to many issues if the landlord elects to exercise its right to relocate the tenant. Franchisee tenants in particular should take a close look at relocation provisions and make sure that they will be specifically protected in a way that would not violate their franchise agreement.

Relocation provisions are typically found in leases for commercial spaces within shopping centers, malls, strip malls, office buildings and larger mixed use buildings. A landlord may choose to exercise its option, for example, to relocate a tenant to make room for a more desirable tenant. One issue with this, amongst many, is that a franchisee tenant often has its site location approved by its franchisor prior to signing a lease. A franchisor may not approve of franchisee moving to a new space because the new space may not meet the standards of the franchised business.

Assuming a franchisee tenant finds it necessary to agree to a relocation provision, the franchisee tenant's should try to negotiate the terms of the provision such that a new space will be approved by, or even subject to the approval of, the franchisor.

Relocation provision elements:

A. Location and Size

Without relocation restrictions, a franchisee tenant could be relocated to a space that is a substantially different location and size or a different floor of a building, away from a prime location that was negotiated for and, more importantly, that the franchisor had pre-approved. Retail franchisee tenants will be especially sensitive to where they could potentially be relocated. Retail spaces are often negotiated for a location with high exposure to potential customers and for a size that is fitting and appropriate for its franchise operations. Typically, prime location for a retail space is one that

yields a lot of foot traffic. Without relocation restrictions, a retail tenant occupying a ground floor, storefront space of a mixed-use building could be subjected to relocation to a space inside of the building or on another floor, without street exposure.

B. Moving Expenses and costs

Landlord draft leases will frequently provide that the commercial tenant is solely responsible for the moving expenses associated with the relocation. When a franchisee tenant enters into its franchise agreement with franchisor, it is considering the costs and expenses of its investment based on one particular location. If relocated, not only would the franchisee tenant have to be concerned with the uprooting of its business, but it would lose its initial build out investment. A separate build out in a new space was most likely not contemplated by the franchisee tenant when taking on a franchise business. Additionally, all costs related to the move, such as hiring a moving company, information technology reconfiguration, modifying the business' website and updates of all materials and promotional items to reflect a new address will have to be borne by tenant. The tenant should request that the landlord pay for all moving expenses and related expenses, including the buildout. Typically, if a landlord agrees to pay, it will want to pay for only "reasonable" or "actual" moving expenses.

C. Notice to Tenant

A franchisee tenant will want a relocation provision that allows for ample notice of a move such that it can properly prepare and assess potential business issues that may arise from the sudden change. "Ample notice" will vary depending on the needs of a particular tenant. It is likely that a franchisee tenant will have its own obligations in providing franchisor with notice of relocation. Accordingly, a notice provision in the lease has to account for this timing. Typically, landlords agree to relocation notices between 60-120 days. Anything less than 60 days should trigger a red flag for commercial tenants, prompting a negotiation.