

**Friday, November 5, 2021
9:00 AM -10:15 AM**

Seminar 15

Leasing Boot Camp II: All the Fun of Leasing Boot Camp I, But with Twice the Roman Numerals

Presented to:

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by:

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Common Concepts and Considerations for Drafting and Negotiating Retail Leases

- A. Limiting Liability
 - 1. Personal Guaranty
 - (a) How to draft limitations of liability
 - (b) Rolling vs. fixed expiration
 - (c) Tenant inducements commonly included in Guaranty obligation
 - (d) "Good guy" guaranty clauses and when to use them
 - 2. Exculpation Clauses
 - (a) What are they and why would anyone ever agree to them?
 - (b) Lender considerations and why they are necessary
- B. Pass-Through Operating Expenses
 - 1. Cap on Operating Expenses
 - (a) Controllable vs. uncontrollable expenses
 - (b) Cumulative, compounding, non-cumulative, non-compounding
 - (c) Resetting to natural upon the commencement of a renewal term
- C. Extension Options
 - 1. Fair Market or Market Rent
 - (a) Items which factor into market rent determinations
 - (b) Drafting enforceable market rate options and avoiding agreements to agree
 - (c) Methods of arbitration
 - (d) Landlord notice to tenant prior to tenant losing an option right

D. Assignment/Subleasing Rights

1. Consents

- (a) Establishing parameters for pre-approved assignments
- (b) Franchisor assumption rights and reassignment to franchisees
- (c) Collateral assignments of leases
- (d) Common "net worth" determination methods
- (e) Compensation to landlord for consideration of assignment requests.

E. Relocation Right

1. Parameters and flexibility on Substitute Space

- (a) Reigning in landlord's flexibility to relocate tenant
- (b) Tenant right to reject proposed relocation spaces and termination rights
- (c) Protecting the tenant's prototypical store layout and controls upon downtime and rent adjustments
- (d) Allocation of relocation costs

F. Restaurant Leasing

1. Unique Covenants

- (a) Grease traps and scrubbers
- (b) Landlord controls upon tenant's menu and preserving tenant's creative flexibility
- (c) Landlord controls upon operational standards, cleanliness and health department scores
- (d) Landlord self-help rights unique to restaurant leases
- (e) The difficulty of defining types of cuisine for exclusive use provisions
- (f) Restaurant infrastructure and restaurant-specific repair and maintenance obligations