

## Avoid the Exit Tax Trap!



**By Brian Madigan LL.B.**

It's bad enough to be finished with your lease, and have no equity, but what about paying thousands of dollars just to leave? This is an exit tax!

In a lease, it's often called the "restoration and removal" clause. You have to read it carefully. Often, it will say something like "restore the premises to the same condition as they were at the commencement of the term". That's not necessarily your term, that's the lease term.

So, you moved in and took over the premises from a bankrupt restaurant. There were hundreds of thousands of dollars of leasehold improvements, many of which were financed by the Landlord, installed by the Landlord or arranged by the Landlord. Actually, as far as this clause is concerned, it doesn't really matter.

At the outset, the premises were vacant, four walls, an open ceiling and cement floors. Now, you have to wonder, what will it cost to get them back to that condition again? It doesn't really matter whether the Landlord is going to have you rip out the installations and improvements. You're simply be responsible for the cost of removal. That might simply mean three estimates, take the lowest and that's what you owe. The next day, the Landlord rents the premises with all those same improvements, still in place to another Tenant. And, charges a premium. In all probability, the same removal and restoration clause will be there in the new lease.

### **What can you do:**

- 1) negotiate its *elimination* at the outset, before you move in,
- 2) *limit* its application, have it apply only to your improvements, not prior tenants,
- 3) have the Landlord agree to assume the responsibility for *prior Tenants*,
- 4) get a *credit* for moneys paid by prior Tenants, particularly if no removal ever took place,
- 5) have the opportunity to remove and *restore yourself*. You'll find a cheaper contractor,

- 6) make sure the *work is done* before you have to pay,
- 7) confirm the condition of the premises when you move in. Take lots of *pictures*,
- 8) if this clause is in, then make sure you document very well, the condition of the premises at the time of commencement of the term. That might be 10 years before you arrived, but the landlord will have this information, if he doesn't, he may *wave* the clause,
- 9) try to negotiate a *cap* on the total financial obligation,
- 10) get several *renewal options*, this way you might be able to push the financial impact of this clause out into the future,
- 11) have the ability to assign this lease to a corporation *without recourse*,
- 12) be aware of the clause, and at *renewal time*, see if the Landlord will be agreeable to eliminating it from the Lease, after all, you've been a good Tenant,
- 13) use the same tactic, if you want to *expand* and take on more space, and
- 14) I know you think that you have a good Landlord who would *never enforce* that clause, but did I tell you that he just sold the property last night to the landlord from ell?

So, do whatever you can do to avoid the exit tax. Take this money, and invest it in the new place!

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