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153.54

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11,740.15

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20.00

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2,169

ASK A LAWYER

Make sure lease won't impede sale of business

Q. I am negotiating an extension of a lease for the premises in which my business is located, but I may sell my business during the extended term. Are there any lease provisions that could negatively impact my ability to sell my business?

Yes. A business owner who neglects to consider the impact of the terms of his or her lease may not realize the full value of the business upon a sale. It is imperative to have a lease that is attractive to a potential purchaser, including the existence of a sufficient remaining term and reasonable flexibility to allow the new owner to implement changes to its business operations and the premises.

Provisions in the lease governing the assignment of the lease or the subletting of the premises warrant particular attention. Leases prepared by a landlord's counsel will typically include a provision requiring the consent of the landlord to any proposed assignment or subletting and often include a provision allowing the landlord the right to terminate the lease and "recapture" the premises if such a request to assign the lease or sublet the premises is tendered.

It also is important to realize that you are not released from liability under a lease upon an assignment. Therefore, you must address any release from liability during your negotiations. In addition, a common lease provision allows the landlord to share in any "profits" derived by a tenant in connection with the assignment of its lease or sublet-

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ting of the premises. Such provisions are often drafted broadly and could arguably include proceeds pertaining to the sale of the business, rather than the actual value of the lease.

Other clauses such as limitations on permissible uses of the premises, trade names, alterations and signage may also impact the ability to realize the full value from the sale of your business.

A business owner and his or her counsel must carefully review the lease to craft limitations on provisions that may impede or adversely affect the sale of a business.

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Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com. This column is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.