

## Negotiating Key Provisions in Shared Work Space Agreements

Rights of Use, Allocation of Risk, Indemnification in Licensing vs. Leasehold Interests

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# Shared Work Space Agreements

Strafford Webinar  
November 12, 2019



# Covered today:



Basics of Shared Workplace Agreements

License vs Lease

Licensor Considerations

Licensee Considerations



“The word coworking won’t be a word in the future, it will probably just be the way we work.”  
- Rahul Prakash, partner at Hatch Today

# What is it?



A shared work space agreement is an agreement between an owner of office space and another business. It can be used where the provider of the space owns the property or has a lease of the property.

# What is it? cont'd

These days coworking space (or shared workplaces) is often managed by multisite companies that offer a network of shared office space.

# Why use it?

- Lower cost than a traditional lease
- Provides flexibility
- Provides networking, collaborating and/or referral opportunities
- Facilities typically provide full office set up
- Licensor may want to profit off of extra space
- Reduces licensor lease burdens

# Lower Cost

- Great for startups, small businesses, and free lancers who don't want to commit to or can't afford a long term lease
- Possible month-to-month terms
- Full office set up

# Flexibility

- For those companies that don't need much, they can license for an office, or a desk, while others can license for multiple offices and open spaces
- Licenses are typically short term, so do not have to sign a lease for 1 year or more

# Networking

- Mix of different entities in one office space
- Mix of industries in one office space

# Full Set Up

- Conference rooms; high speed internet; printers/copiers; phone lines; coffee and kitchen; desk space; office space; furniture
- Use of common area
- Lowers the cost and allows access to the amenities companies want in an office space

# Lease vs License

	Lease	License
Rights	Tenants have rights to exclusive possession of the space	Right is simply permission to occupy a designated portion of the space; not a possessory right
Transferability	Transferrable; however, depending on the contract, might need permission from landlord to sublease, assign, or license	Non-transferrable
Duration	Fixed duration	Generally revocable
Revocability	Can't revoke, breach of contract	Revocable at any time
Eviction	Process of Notice and Judicial Proceeding	Depending on the agreement, can evict at any time

# General Characteristics of a License

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- A license is the permission to do something on the land of another that, without such authority, would be unlawful.
- As a mere personal privilege to use another's property for a particular purpose, a license is ordinarily unassignable, and revocable.
- Generally, a license is not viewed as an interest in the land

# Revocation of a License

- Except as stated in Subsections (2), (3) and (4), a license is terminable at the will of the possessor of the land subject to it.
- (2) In the termination of the license of one who has entered upon land under a license, the licensee must be given a reasonable opportunity to remove himself and his effects from the land.
- (3) A license coupled with an interest can be terminated only to such an extent as not to prevent the license from being effective to protect the interest with which it is coupled.
- (4) A licensee under such a license as is described in § 514 who has made expenditures of capital or labor in the exercise of his license in reasonable reliance upon representations by the licensor as to the duration of the license, is privileged to continue the use permitted by the license to the extent reasonably necessary to realize upon his expenditures.
  - Restatements § 519

# Other Ways to Terminate a License

- Courts generally have held that sale or transfer of the servient property by the licensor automatically terminates the license
- A license granted by a tenant terminates when the lease expires.
  - A few courts, however, have qualified this rule by concluding that the license may continue when the new owner raises no objection to its usage.
- The grant to another party of a nonexclusive easement over the area of the existing license does not terminate the privilege.
- A license is terminated upon the death of the licensor or licensee by virtue of the personal character of the permissive use involved.

# Other Ways to Terminate a License

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- Abandonment or surrender by the licensee
- Licenses for specific purpose end once the specific purpose has been accomplished
- License is also ended when relinquished by the licensee

# Assignability of Lease

- Licenses are generally not assignable by the licensee because they are personal in nature and are thus limited to the original parties
- Some courts say that an attempted assignment terminates a license
- Some courts say a license may be transferred when the parties intend the privilege to be assignable.
- Some courts say when a license arises from a commercial transaction, courts infer that the parties intended the license to be assignable unless they had expressed a contrary intention.

# Owner Issues

- Licenses may diminish landlord's control over tenant mix
- Consent provision will cure this
- Do licensees have insurance coverage; or does licensor's insurance coverage cover licensees
- Are there restrictions in the license to prevent licensees from disturbing other tenants in building?

# Owner Issues cont'd

- What services do the owners need to provide
- Do they get a share of the profits from the sublease/license
- Provision Landlord should require in Licenses between Tenant and License:
  - Licenser has provided Licensee with a copy of the Lease and Licensee acknowledges receipt thereof. Licensee agrees to comply with the terms and provisions of the Lease with respect to its use of the Licensed Area and the common areas.

# Licensor Issues

- Lease price increases at the end of the term
- Need consent of the landlord before entering into license or sublease
- Whether licensees conform with permitted uses of space
- If the license has similar characteristics of a lease, courts may determine that a leasehold interest is created

# Licensor Issues cont'd

- Does licensor have free access to the area
- What happens if furniture or common spaces are damaged, who is liable
- Licensor may be contributorily liable for Trademark infringement
- Is the licensor liable for any services the landlord did not provide

# Licensor Issues cont'd

- Who is responsible for repairs to the licensee's area
- Is the licensor liable for damages to licensee's personal property or equipment
- Is there enough flexibility in lease agreement to account for market risk

# Licensee Issues

- Are alterations allowed
- Concern that license is revocable at will
- Are there limitations to licensee's permitted use
- Can the licensor modify the underlying lease agreement unilaterally
- What services can the licensee expect the licensor or landlord to provide

# Licensee Issues cont'd

- Who is responsible for repairs to the licenses area
- Privacy concerns
- Appearance of partnerships

# Top Negotiating Points



- Responsibility for the space
- How will decisions be made
- How will costs be divided
- How will common space be shared



# Questions?

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# Thank You

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