

Be Careful When Sharing Space!!

By

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With many practitioners struggling to maintain some semblance of balance in this challenging economy, some are looking to space sharing to ease the burden. They are making use of extra operatories or schedule openings to generate found revenue. In principal, it's a great idea. But sharing space can be **very tricky** and it should NEVER be done without at least a sublease and possibly also an operating agreement. Sometimes the operating concepts can be incorporated in the sublease. Sometimes it is better to have two separate agreements.

a sublease describes the **occupancy** rights and obligations of both parties such as rent, utilities, maintenance & repair, liability, security, etc.

an operating agreement describes the **operational** rights and obligations of both parties such as sharing of staff, equipment, computers (DON'T share computers!), telephones, supplies, etc..

Just make sure that you don't assume ANYTHING about the occupancy arrangement. Sharing space will be a real nightmare unless you and the others with whom you contemplate sharing thoroughly consider all aspects of the arrangement - and then get it all down in a written agreement that details everything with specificity. Every situation is unique. Therefore, at a minimum, you must start with the following:

1. Establish exactly what your goals are.
2. Develop a complete list - with specificity - of exactly what space / equipment / materials / supplies / services you would be willing to make available to the renter. Attached is a questionnaire that you may use to establish some of the conditions.
3. Put a price tag on as many of those elements as possible.
4. Determine what specific schedule you are willing to agree to for use of your facility.

As for the amount to charge, that is largely a function of #2 and #4 above. Will he/she have access to and use of your break room? reception area? administrative areas? steri area? storage areas? telephone systems? computer systems? other fixtures and equipment? Will your help be doing anything at all for this other player and his/her staff?

There is no magic formula, as each of these arrangements is unique. If your goal is to partially cover your monthly rental nut, go for a reasonable number that he/she won't choke on so that you can both benefit. This is not the time to try to squeeze every possible dollar out of your guest. Many will say, however, that you can obtain more income by charging a percentage of his/her production (if you can confidently verify it) than by trying to charge "rent".

I encourage that you not take this part time occupancy lightly. There are numerous issues associated with having another party using your facility. Among many others you'll want to address - in writing - such things as: (i) length of term for the agreement and default/termination remedies for non-performance by the occupant; (ii) liability and indemnification; (iii) maintenance & repair of your equipment. Just because it may only be part time or just one operator doesn't mean that you should assume that this can just be a simple agreement. The asset that you have built is far too valuable to expose to a carelessly crafted agreement. And know that you may have to secure your landlord's consent before allowing anyone else to use your facility.

The sublease is about memorializing the rights and obligations of both parties in order to preclude (as much as possible) misunderstandings (at the least) or legal fights (at the most). There are numerous issues: among others:

1. Facility security
2. Facility maintenance & repair & cleaning
3. Parking rights
4. Signage rights
5. Dedication of space use
6. Insurance requirements
7. Rental inclusions/exclusions and payment terms
8. Default remedies
9. Control of use
10. Length of occupancy term

11. Early termination

Seek assistance from a qualified lease expert and have a proper sublease constructed to reflect the arrangement. If you are reluctant to take that step because you want to avoid a bill, the thrill that you may get by avoiding such a bill will be long gone if you ever have a serious falling out with the other party resulting from his/her occupancy under an inadequate agreement. Don't be penny wise and pound foolish by putting the practice you have built at risk just to save a few bucks.

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