

Lease clause keeps business owners from selling

REAL ESTATE

BY JANIS L. MAGIN
PACIFIC BUSINESS NEWS

An oft-overlooked clause in many commercial leases in Hawaii can cause a business owner to rethink plans to sell after learning the landlord is entitled to share in the proceeds of the sale.

It's standard for some leases to include a clause that grants the landlord 25 percent to 50 percent of the profit of the sale of a business, commercial real estate brokers say.

That's enough for some business owners looking to exit for whatever reason — retirement, family considerations, relocation — to choose instead to continue to operate rather than hand over a piece



Abdalla

of the profit.

Steve Abdalla, owner and president of VR Business Brokers in Honolulu, said he has yet to sell a business where an owner had to share the proceeds with the landlord. That's because those owners opted not to sell.

"A lot of times it makes it impossible to sell it," he said.

Leases often have provisions for subleasing that ensure that a tenant can't profit from higher market rates by subletting the space for more rent than is specified in the lease.

That's understandable, Abdalla said.

"It would be reasonable if the lease is below market and the business owner is

getting value because the lease is below market," Abdalla said. "This is the good will of the business."

In many cases the clause is in the lease to protect a landlord if a tenant sells the business to a buyer who inherits a discounted rent, especially if it's in a highly desired location, such as a spot in Ala Moana Center or along Kalakaua Avenue in Waikiki.

Such clauses almost always apply to retail businesses, which rely on location.

"A big part of the value can be the lease," said Larry Taff, managing partner of The Shidler Group, which owns and manages Restaurant Row. "So it's hard to say how much the business is worth and how much the lease is worth."

The Shidler Group doesn't typically

include such clauses, Taff said.

But Cory Beall, vice president of The Beall Corp., said he has seen it in leases all over the state.

"It's just one of those boilerplate clauses in the lease that sometimes tenants don't pay attention to," he said.

Businesses always have the option to wait until a lease expires and then move to a new location. But that's not necessarily a good move, especially for a retailer or restaurant.

"For the typical 90 percent of business owners, if you're gone from that location you're going to lose a huge percentage of your business," Abdalla said.

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SBA's 7(a) loans decline despite weakening U.S. economy

SMALL BUSINESS

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Banks usually make more Small Business Administration-backed loans when the economy weakens, but that's not the case this time around.

When credit standards tighten, lenders typically steer more small businesses to SBA loans. The government guarantees on these loans, which range from 50 percent to 85 percent, enable banks to make loans to businesses that don't qualify for conventional loans.

Fewer businesses may benefit from SBA loans during this downturn, however. The number of loans made through the SBA's

SBA lending, Hawaii and U.S.

HAWAII		
	FY2007	FY2008
7(a) LOANS		
No. of loans	107	96
Total dollars	\$8.4 million	\$5.8 million
504 LOANS		
No. of loans	5	12
Total dollars	\$2.8 million	\$7.9 million
U.S.		
	FY2007	FY2008
7(a) LOANS		
No. of loans	29,964	25,767
Total dollars	\$4.1 billion	\$2.9 billion

Hawaii district's 504 loans grow

The Small Business Administration's Hawaii district office has approved fewer loans through its 7(a) program so far this fiscal year compared to last year, but its number of 504 loans has more than doubled.

From Oct. 1 through Jan. 25, the Hawaii SBA office approved a total of 12 loans through its 504 loan program, up from five loans in the previous period. The increase more than doubled the dollar volume for 504 loans to \$7.9 million in the current period from \$2.8 million the prior period.

The loan program provides businesses with long-term financing for major fixed assets such as land and buildings.

million loan portfolio, Wilkinson said.

"What do you think that guy is going to do?" he said. "Some of these guys are going to say, 'Forget this, come and get your license.'"

These charges will become higher this year, as banks are assessed for a full year of oversight.

"The head of a lender's SBA loan division simply cannot justify to senior management SBA's existing fees in light of the benefits received," Wilkinson wrote in a Dec. 17 letter to SBA Administrator Steven Preston.

Wilkinson's group asked for an indefinite suspension of lender oversight fees for banks already regulated by the federal government and a ceiling on loan fees for