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Strategies For Retailers, Landlords In M&A Portfolio Reduction, *Law360*

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Merger and acquisition activity in the retail sector is expected to be strong throughout 2026, coming on the heels of a series of large transactions in 2025 led by Sycamore Partners' $23.7 billion take-private of Walgreens Boots Alliance Inc. and Dick's Sporting Goods Inc.'s $2.4 billion acquisition of Foot Locker.

Wall Street analysts are largely in agreement that portfolio optimization and defensive restructuring will continue to propel deal activity in the sector over the coming months. While recent megadeals were structured as equity transactions, asset sales and divestitures remain a critical mechanism for portfolio rationalization, particularly where retailers need to exit specific locations or transfer underperforming stores.

In both contexts, retailers with large national footprints continue to reevaluate the size and configuration of their leased real estate portfolios. At the same time, landlords — particularly those operating shopping centers and mixed-use assets — are increasingly focused on tenant mix, credit quality and long-term asset value. Against this backdrop, transactions involving store closures, lease terminations and asset divestitures are less about market headlines and more about the allocation of rights and leverage embedded in lease documents.

For both retailers and landlords, the success of a leased retail portfolio-reduction strategy often turns on advance planning, clear and comprehensive transaction documents, a disciplined understanding and application of lease mechanics, and a realistic assessment of negotiating power.

This article examines those issues from both sides of the table, with a particular focus on M&A-driven portfolio changes and the associated transaction structures, landlord consent issues and practical negotiation dynamics. While portfolio reduction encompasses various strategies beyond asset sales, including targeted store closures and subleasing arrangements, such alternative approaches fall outside the scope of this article.

Understanding the Leased Portfolio

Retailers typically hold a mosaic of real property interests, including owned properties, ground leases, traditional leases, licenses and joint venture interests. Each category presents distinct legal and economic considerations. Owned assets may be subject to rights of first refusal or consent rights held by joint venture partners or lenders, while licensed spaces may be constrained by operational or branding limitations. Ground leases often include unique approval, transfer and use restrictions that materially affect exit strategies.

Leased locations, however, present the most acute challenge in a portfolio-reduction context. A retailer's ability to sell, close or transfer a store is almost entirely governed by the lease, and the lease often allocates risk in ways that are not immediately obvious at a portfolio level. For landlords, these same provisions serve as a principal mechanism to protect asset value, control tenant mix and manage co-tenancy dynamics.

Transaction Structure and Portfolio Reduction Strategies

In M&A deals, transaction structure plays a critical role in determining whether and how lease assignment issues arise. In an asset sale, the buyer acquires specified assets of the seller, and the leases for transferred locations must typically be assigned, triggering any applicable assignment and consent provisions.

By contrast, in a stock or equity M&A transaction, the buyer acquires the equity of the tenant entity rather than its assets, and the leases generally remain in place without a technical assignment, although change-of-control or deemed-assignment provisions may still require landlord consent.

Because landlord consent frequently becomes the gating issue in asset deals — and a latent risk even in equity transactions — it should be treated as a core transaction consideration from the outset. In practice, the landlord consent process does not begin with outreach to landlords; it begins with the drafting of the transaction documents.

In asset transactions, the asset purchase agreement is the primary vehicle for allocating landlord-consent risk. Well-drafted agreements address which party is responsible for seeking consent, how and when consent efforts must be pursued, who bears the cost of landlord-required concessions, and what happens if consent is delayed or denied. These provisions often include drop-dead dates, purchase price reallocations, carveout mechanics for excluded locations or post-closing resolution frameworks.

Landlord Consent as a Transactional Risk

In asset transactions — or equity deals where leases contain change-of-control provisions — obtaining landlord consent is often the most time-consuming and unpredictable aspect of a leased-portfolio transaction. Retailers may view consent as an administrative step, while landlords often see it as an opportunity to reassess tenant credit, use and long-term fit within the property. Neither

perspective is inherently unreasonable, but the tension between them frequently drives deal risk.

From the retailer's perspective, delays or refusals can jeopardize transaction timelines, increase carrying costs and complicate broader restructuring efforts. From the landlord's perspective, consent decisions affect income stability, co-tenancy compliance and long-term asset strategy. The governing lease language — and, in particular, the applicable consent standard — largely determines where leverage lies.

Lease Review and Assignment Provisions

From a retailer's perspective, a comprehensive lease review is therefore essential. All leases, amendments, side letters, guaranties and collateral agreements must be reviewed to determine whether the contemplated transaction is permitted and, if so, under what conditions.

The lease review should be tailored to the transaction structure. For example, in an asset transaction, particular attention should be paid to assignment provisions, subletting rights, notice requirements, security arrangements and any landlord termination or recapture rights. Conversely, in equity transactions, the lease review should narrow in on change-of-control language.

Lease assignment provisions generally fall into several categories, each with distinct practical implications. Some leases prohibit assignment entirely or permit assignment only with landlord consent exercisable in the landlord's sole discretion, giving landlords maximum leverage.

Other leases require that consent not be unreasonably withheld, which limits a landlord's ability to block a transaction but still permits conditions tied to legitimate asset-related concerns. Still other leases permit assignment without consent to specified transferees, such as affiliates or entities meeting defined credit or operational thresholds, provided that detailed conditions are satisfied at the time of transfer.

In addition, certain leases grant landlords termination or recapture rights triggered by assignment requests, changes in use, or transfers affecting more than a specified percentage of the premises. These provisions can dramatically alter negotiation dynamics and, in some cases, can be triggered inadvertently if communications are not carefully managed. From a retailer's perspective, it is critical to develop a detailed tracking mechanism to compile lease information and to understand the landlord's rights and obligations under each lease.

Assignment clauses frequently contain standards that are fact-dependent or subject to interpretation. For example, a lease may permit assignment without consent to a "national retailer" or to an assignee operating a minimum number of stores in a defined geographic location. Disputes often arise over whether those conditions must be satisfied before the assignment becomes effective or whether post-closing operations are sufficient.

Where a retailer is transferring multiple locations simultaneously, these interpretive issues can recur across the portfolio. Adopting a consistent interpretive position — rather than negotiating each lease in isolation — can reduce internal friction, streamline negotiations and avoid inconsistent outcomes that undermine deal economics.

Communications With Landlords

Communications with landlords require particular care. Some leases grant landlords termination or recapture rights upon receipt of a tenant's written request to assign or sublease, or even upon notice that a transfer is being contemplated. Informal emails or exploratory outreach can therefore have unintended consequences if not carefully framed.

As a result, retailers and their counsel often seek to create a safe space for discussions, making clear that communications are preliminary, nonbinding and not a formal request for consent. From a landlord's perspective, this approach can preserve transparency while avoiding premature triggers; from a retailer's perspective, it mitigates the risk of inadvertently activating adverse lease rights.

Managing Consent Risk Through Deal Design

Transaction structure can also be used to manage consent risk. Retailers may carve out particularly problematic locations, stagger closings to fit within permitted-transfer thresholds, substitute subleases where allowed or sequence transactions to satisfy lease conditions over time. In some cases, consent challenges at a small number of locations drive the structure of the entire transaction.

Landlords, for their part, may condition consent on a range of concessions, including rent increases, term extensions, elimination of expansion or termination rights, additional guaranties, branding or use restrictions, or one-time payments. Delays are also common, whether due to internal approval processes, coordination among multiple ownership entities or strategic efforts to increase leverage as closing approaches.

Confidentiality agreements may be required to facilitate information sharing regarding the proposed assignee's financial condition and operational plans. Clear internal guidelines regarding acceptable concessions, approval authority and escalation protocols can help retailers maintain consistency across large portfolios, while landlords benefit from a disciplined approach to evaluating proposed transfers.

Dealing With Recalcitrant Landlords

Even with careful planning, some landlords will resist or refuse consent. Available strategies for dealing with them include business-level negotiations leveraging existing relationships, removal of locations from the transaction package, staggered or delayed closings, assertion of permitted-transfer rights, or, where appropriate, litigation over reasonableness or breach-of-lease claims. Each

option carries legal and commercial risk and should be evaluated in light of transaction objectives.

For landlords, prolonged vacancies, litigation or failed transactions can impair asset value and disrupt tenant mix. For retailers, unresolved consent issues can undermine broader strategic initiatives and increase execution risk. Addressing these contingencies explicitly in transaction documents is often the most effective way to reduce uncertainty.

Conclusion

Reducing a leased retail portfolio is not merely an exercise in contraction; it is a complex transactional process that requires balancing the legitimate interests of both retailers and landlords.

Leases allocate leverage, but outcomes are ultimately determined by transaction structure, a comprehensive understanding of applicable lease terms, careful communication and disciplined negotiation. When approached deliberately, portfolio reductions can be executed efficiently even in challenging market conditions.

As retail M&A momentum continues into 2026 in what analysts describe as a selective environment favoring strategic transactions over scale, dealmakers will need to carefully evaluate lease provisions governing assignment and transfer that were negotiated years before any portfolio reduction was contemplated.

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