



Consider Remodeling Your Lease to Avoid Unnecessary Problems

Abe J. Schear

Landlords seem to have an unnatural aversion to changing their lease forms and, while the document should surely not be constantly over-hauled, there are times, particularly when we are dealing with existing space and second generation tenancies, that changes might be useful. Surely, one of these areas concerns prohibited uses.

Recently, when negotiating a supermarket lease for the landlord, one which would conceivably be more than 40 years, there were issues raised regarding restricted uses, issues that could just have easily been in the landlord's form. For instance, there were restrictions regarding medical uses, car dealerships and drug paraphernalia.

Is there any question that healthcare will be an even more important part of retail centers? Not just on the second floor or out of sight, many health users pay significant rents and bring strong traffic to the property. It might be reasonable to restrict healthcare to not more than some stated maximum square footage or percentage of the GLA, but the center's owner does not want to lose its edge. Similarly, regarding cars, if Lenox Square in Atlanta can have a car dealership, then car showrooms are a use that should fit many properties. Surely, the issue of parking is relevant but that is only relevant if the use is allowable.

Another example, and one which is very current, is the sale of marijuana. If not criminalized, is the use allowed or not? Leases need to balance length of term with the potential uses in the future, both near term and longer. Tattoo parlors (I'm not sure why it is called a parlor) are now big business and, while they have their own set of issues, some would consider it no different than a hair salon. It is to many a fashion statement and surely is now, for most, a non-shocking use.

Some uses will of course forever be restricted but times change as does our society and the landlord should not restrict itself unnecessarily. Centers are looking for experiential uses to replace old and tired uses and flexibility should be, as practical, maintained. Perhaps there is a middle ground in noting that there simply are restricted areas where certain uses cannot be allowed or perhaps there is a period in which the restrictions burn off.

There is no clear answer other than to realize that the landlord needs to have some reasonable flexibility and that a well-crafted lease should contemplate the future.

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