

Wednesday, November 3, 2021
2:00 PM – 3:15 PM

Workshop 2

The Good, the Bad and the Unintended in Retail Cannabis Leasing

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DISCLAIMER: CANNABIS REMAINS CLASSIFIED AS A SCHEDULE I CONTROLLED SUBSTANCE BY THE U.S. DRUG ENFORCEMENT AGENCY, AND AS SUCH IT REMAINS A FEDERAL CRIME TO GROW, POSSESS, DISTRIBUTE, SELL, AND/OR USE CANNABIS. ANY CONTENT CONTAINED HEREIN IS NOT INTENDED TO PROVIDE LEGAL ADVICE TO ASSIST WITH VIOLATION OF ANY MUNICIPAL, STATE OR FEDERAL LAW.

OVERVIEW

- I. INTRODUCTION
- II. GOALS
 - A. Identify Unique Considerations in Retail Cannabis Leasing
 - B. Know how to Modify Your Form LOI for Retail Cannabis Leasing
 - C. Differentiate Necessary and Unnecessary Retail Cannabis Lease Provisions
- III. A BRIEF OVERVIEW OF THE CANNABIS BUSINESS
 - A. Legality, Licensing, and Compliance
 - B. Financial Matters
 - C. Enforcement Risks
- IV. A PRACTICAL APPROACH TO NEGOTIATING RETAIL CANNABIS LEASES
 - A. No Lease = No License
 - B. Picking Multiple Locations
 - 1. Determine Whether Transaction Parties Truly Want to Be in Cannabis Leasing
 - 2. Examine Statutes Regarding Location Restrictions
 - C. Locking-Up the Premises
 - 1. Customize Letter of Intent (Address Points in Section III Below)
 - 2. Exclusivity Period for Premises / Negotiating With Competing Businesses
 - D. Negotiating the Lease
 - 1. Custom Lease vs. Lease Rider

ACTIVITY #1 Outline Letter of Intent

V. NEGOTIATING PART I: CONSIDERATIONS IN RETAIL CANNABIS LEASING

A. All Challenges of General Retail Leasing are Present

B. Applicable Law

1. State vs. Federal Laws
2. Necessary Carve-Outs

C. Commencement Contingencies

1. Applying for a License & Place of Business
2. Contingency Fee
3. Termination Rights

D. Anti-Joint Venture

1. Percentage Rent & RICO
2. Deemed Ownership & Licensing Disclosures

E. Landlord Access Rights

1. Cannabis Storage
2. Dispensary Security Requirements

F. Allocation of Enforcement Action Risks

1. Acknowledgement of Risks
2. Indemnity Carve-Outs

G. Insurance

1. Cannabis Businesses & Commercial Availability of Policies

H. Termination Rights

1. Impending Enforcement Action
2. Change in Law
3. Loss of License

I. Landlord's Liens

1. Security Interests in Cannabis

J. Relocation Rights

1. License Grants and the Premises

K. Tenant Exclusives/Prohibited Uses

1. Nuisance Complaints
2. Statutory Location Restrictions
3. Competing License Applicants

L. Arbitration

1. State vs. Federal Courts
2. Enforceability of Lease

M. Change-in-Law

1. Permitted Use
2. On-Site Consumption
3. Preemptive Approval for Mandated Improvements

Activity #2: Revise Outline Letter of Intent

VI. NEGOTIATING PART II: SPECIAL NOTES ON RETAIL CANNABIS LEASES IN SHOPPING CENTERS

A. Use Restrictions – Zoning Ordinances, Other Leases, and Agreements

B. Use Restrictions – “Foot Rules” and Virtual/Implied Exclusives

C. Use Restrictions – Anchor Tenant Restrictions & Expansion / Contraction Rights

Activity #3: Finalize Outline Letter of Intent

VII. CONCLUSION & QUESTIONS