

insights

TYPES NOT MAPPED YET December 21, 2018 | TTR not mapped yet | Gayle L. Mercier

Opportunities and risks for cannabis tenants

With medical cannabis legalized as a matter of state law in Missouri after the passage of Amendment 2, cannabis facilities will be up and running in 2020. The coming industry creates new opportunities for real property owners interested in expanding their businesses, but does come with several risks and questions. Entities interested in utilizing real property for cannabis businesses need to be aware of the current issues and possible solutions.

State versus federal laws

Though legalization is a great boom for the cannabis industry, a number of questions still remain on how state and federal laws will impact cannabis-related real estate. [Amendment 2 allows the formation](#) of cannabis cultivation and cannabis-product manufacturing facilities in Missouri, pending approval for licenses. However, the Controlled Substances Act (CSA) still prohibits leasing property knowing it would be used for the production or distribution of controlled substances (21 U.S.C. §856(a)(1)-(2)). Violation of the CSA could result in a civil forfeiture of property, regardless of whether the property is owned and operated by the same entity or is leased to a cannabis-related business.

Issues facing owners of property used for cannabis-related transactions

Property owners face a number of other issues in the cannabis industry:

- Any federally regulated bank - which is a steep majority - is prohibited from lending to cannabis related businesses, pursuant to the CSA. While financing could be available, options are severely limited under current laws.
- Insurance companies are often hesitant - and sometimes refuse - to provide property and commercial general liability coverage to property used for cannabis-related business.
- Zoning laws affecting cannabis businesses are often strict and unpredictable. Under Amendment 2, local governments are allowed to enact ordinances governing the time, place, and manner of operation of cannabis businesses.

Cannabis lease issues: Tenant's perspective

- Anyone seeking to use real property for the development and operation of a cannabis-related business should educate and involve a potential landlord as early as possible in the process to help abate later issues surrounding the use permissions in a lease. By carving out broad and specific use provisions in a lease, tenants can help prevent later issues arising from "compliance with all laws" general use restrictions.
- Tenants should also consider the length of their lease term; both shorter and longer terms have significant pros and cons. Shorter terms with renewal options offer some protections against market risk or the loss of licenses, but longer terms can secure rent rates and provide protection from large renegotiations. Tenants should also consider including a termination provision in a lease in case an operating license is not issued for the business, or if a license is not renewed.
- Most cannabis licenses will require rigid restrictions as to who and when someone can enter upon the business' premises. In order to protect their business and licenses, tenants should consider these restrictions when negotiating with a landlord in order to comply with license requirements and/or HIPAA issues to protect the security of their operation.

- When negotiating a lease, the benefit of a SNDA is undeniable. However, tenants need to be aware of the risk of involving a potentially reluctant lender into negotiations. If a lender is already unenthusiastic about working with a cannabis business, it may be more beneficial to forgo a SNDA to avoid completely soiling a deal.

authorsTest

gayle

Gayle L. Mercier