Cannabis Businesses and New Jersey Real Estate: The Landlord's Perspective - Part Three

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With the Cannabis industry booming, commercial real estate owners and landlords are challenged with keeping up with best practices, laws, and regulations related to leasing space to cannabis businesses. The article below is the third article of our three-part series intended to help landlords navigate this evolving landscape. As with any business interest, the Porzio team strongly encourages seeking the advice of counsel prior to making any representations or entering into any agreements.

Lease Terminations

As we discussed briefly in Part 2 of this series, when negotiating a termination provision, it can be expected that the tenant will want to set the parameters stating when the landlord may terminate. Among other things, the tenant may ask for a black-out period to allow a particular growing cycle to be completed or to allow for the orderly transfer of product to a new facility. The tenant may also wish to carve out high volume selling seasons such as the back to school or holiday seasons. In allowing this termination right, the landlord should build in a sufficient cushion to market the space, secure a new tenant, and retrofit the space for the new tenant.

Noxious Uses

Traditionally, leases contain restrictions on noxious uses such as uses that the landlord may deem harmful, immoral, or contrary to the general character of the building, development or site. Landlords will have to revise existing leases to allow for the incoming cannabis tenants to redefine what constitutes a noxious use. Landlords will also have to consider the impact of this revision on existing or targeted tenants to make sure the rules and regulations of the building or project site are uniform. As growers expand, and if the industry is legalized at the federal level, space suitable for cannabis tenants may become scarce, especially in densely populated areas like the metro areas of New Jersey. This rapid growth could trigger a greater need for exclusivity provisions on the part of the tenant.

Insurance for Cannabis Tenants

Another consideration New Jersey landlords should consider before entering into leases with cannabis tenants is whether or not these businesses and their related activities will be able to obtain the type of insurance coverage that landlord's typically require their tenants to obtain. While coverage for tenants engaged in cannabis operations is available, there are a limited number of carriers that offer this type of coverage, it is expensive and there are gaps in coverage. All of the foregoing are issues which tenants not engaged in the cannabis business do not have to contend with. This area is clearly evolving, and the question is whether insurers will begin to make more readily available liability, property, worker's compensation, rent loss and/or rent interruption insurance for space leased to tenants in the cannabis industry?

Cannabis-related businesses face many risks and obstacles. They share the same general liability and other risks agricultural and manufacturing businesses face including workplace accidents, damage to property, and crop failure. Cannabis related businesses are especially prone to fires from both wild and internal sources. Other significant risks include theft, general liability, and product liability. As such, to address the risk of uncertain coverage, landlords may, if the type of coverage that a tenant is able to secure doesn't comply with the landlord's insurance requirements, consider requiring cannabis related tenants to self-insure their business.

The Future

The expansion of the cannabis industry has so far proven to be inevitable across the country and New Jersey has been no exception. As of the publication date of this article, many cannabis related businesses in New Jersey are going through the licensing process and are looking for commercial space for their current and future business operations. Now is the time for landlords to be at the ready so that New Jersey landlords and cannabis related businesses can benefit from our current state of affairs.