

# SHOPPING CENTERS

## By Jerry A. Nelson and Thomas S. Onder, Stark & Stark Ensuring compliance with your leases

**S**hopping centers are required to comply with many municipal, state and federal laws, codes, ordinances, rules and regulations. Failure to comply can incur fines, penalties, damages and lost opportunities. It is vital that you retain experienced counsel that understands these complex compliance issues to save both cost and time. The following are just a few compliance issues to note on your next lease:

### 1. Land Use/Licensing

The lease use and improvement provision is crucial to compliance. If a variance, license or other approval is required, savvy lease drafting should provide who will be responsible to obtain it and when, as well as what happens if approvals are not timely obtained.

### 2. ADA

Americans with Disabilities Act ("ADA") provides persons with disabilities an equal opportunity to access and enjoy places of public accommodation. However, the industry has seen a rise in serial ADA litigants "trolling" for technical violations to simply shake down a landlord. Having routine audits to correct violations can prevent both violations and these suits from occurring. In addition, the lease should allocate responsibility for performing work in compliance with ADA requirements inside tenant spaces, as well as the parking lot and other common areas.

### 3. Medical Use and Health Care

The rise in urgent care centers, clinics, labs and other medical uses is a boon to landlords. Navigating the variety of laws, including the Stark Law, Anti-Kickback Statute, Affordable Care Act, False Claims Act, Exclusion Statute, Civil Monetary Penalty Law and the Health Insurance Portability and Accountability Act ("HIPAA") can be daunting. However, certain exceptions and safe harbors can help avoid costly violations. It is important that counsel understand these laws and not simply use the same lease for other non-medical use space. For example, many people do not know that

percentage rent is a "no-no," as it is viewed as a kick-back.

### 4. Environmental Issues

Centers today deal with hazardous substances from medical uses, dry cleaners and gas stations. It is critical that the lease provide a system for proper disposal. Further, the insurance provi-

sion is key to managing the risks associated with these tenants. Don't forget to have

tion of the lease term.

### 5. Residential Leasing

Adding a multi-family component to a shopping center can really drive traffic and make a good center great. However, multi-family, mixed use and other residential components need to comply with residential lease laws that can be much different than retail leasing laws. Safeguard that the residential lease addresses any security deposit, removal, abandoned property, as well as collection of attorneys' fees/costs.

### 6. Bankruptcy

There has been a rash of



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Chapter 11 retail bankruptcy filings. As a landlord, you need to know how the lease will be treated in the bankruptcy case. Hiring effective counsel is key. But it is also important to ensure your lease provides for collection of those fees in the bankruptcy. Make certain that counsel reviews the lease provision and correct it if needed with an amendment before the filing.

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