



MEDICALOFFICETODAY



866.329.8001 ameriscribe.biz

- 24/7 web-enabled, HIPAA secure access to medical records
- Digital signature
- Easy integration with all EMR systems
- Digital dictation and voice recognition platform
- 30 years of superior client service

Subscribe to free newsletter

Wednesday, July 21, 2010

Leasing | Development | Buying | Selling | Finance | Design | Expert Commentary  
Facilities Management | Sustainability | Products | People | Research/Case Studies | E-Newsletters

Search:

## Dealing with Tenants in a Retail Center

Rights and recourse when faced with an incompatible tenant

By **Carrie Rossenfeld**

Today's retail vacancy rate has led to a true "tenant's market," paving the way for medical practices like yours to lease retail space at competitive rental rates. As good as this sounds, this scenario opens the door for potential problems with neighboring tenants that aren't affiliated with the medical field and don't necessarily have your goals in mind—in fact, their business goals may directly conflict with yours.

Consider this: a pediatrician already occupies retail space and a tattoo parlor sets up shop next door, or a cigar store opens next to a cancer treatment center? Can you prevent situations like this from occurring, before you sign a lease and move in? And if it happens once you're in the retail space, what can you do to cope?

### Restrictions and exclusivities

The good news is that building owners are showing surprising flexibility in negotiating leases and may now be willing to write restrictions and exclusivities into your lease that prevent the above-mentioned type of conflicts.

"The current market has created a real opportunity for medical tenants considering retail space to get protections that would have been unheard of two or three years ago," says Erik H. Rosanes, a real estate attorney with the New York law firm of Donohue, McGahan, Catalano & Belitsis.

There are several different types of clauses covering competing and conflicting tenants that you may be able to negotiate into your lease. First, identify the type of neighboring tenant you want to avoid and have the landlord place use restrictions or grant exclusive rights in your lease. Keep in mind that generally the more space you are leasing, the more negotiating power you'll have.

It's important to think about this issue before you sign the lease. Unless you negotiate a restrictive or exclusive-use clause, the landlord owns the property and has the right to lease to whomever he or she sees fit.

"If neighboring shops are a major concern for your medical practice, perhaps leasing space in a medical office building might be a better option," says Rosanes.

### Identify your risk

When considering retail space, don't just look at the tenants currently surrounding the space; you should also think about possible future tenants.

"There is a high turnover rate with commercial leases, and therefore it is very possible that a retail center would have a completely different set of neighboring tenants within a few years," says Zachary D. Schorr, a real estate attorney in Los Angeles.

This is particularly true for smaller shopping centers that house local tenants. National retailers and even larger regional chains tend to sign longer leases, so they might be around longer. Smaller, local tenants tend to sign short-term leases.

Talk with the landlord about the type of tenant you want to avoid and see if he or she will commit to not placing them near you. Then, if you take the space, make sure those restrictions are written into the lease.

"Beware of uses that might create objectionable noises or odors, or attract a certain clientele that is incompatible with a medical office," says Steven D. Sallen, president and CEO of Maddin, Hauser, Wartell, Roth & Heller, P.C. in Southfield, Mich.

### Talk it out

If you're already in a retail center and an incompatible situation arises with another tenant, see if you can work it out without any legal measures first.

"I always recommend a good neighbor policy," says Sallen.

Politely contact the other tenant, explain the problem and suggest a reasonable solution that will alleviate the problem. If that doesn't work, ask your landlord if he or she can help resolve the dispute.

Perhaps restricting the tenant's visibility via limited signage can be implemented. They may even be willing to relocate the other tenant. Landlords want you to be happy, and they don't like vacancies, so they likely will try to be helpful.



ADVERTISEMENT

## ADVERTISE HERE

call 817.920.1434  
or email

[jennifer@medicalofficetoday.com](mailto:jennifer@medicalofficetoday.com)



MEDICALOFFICETODAY

ADVERTISEMENT

If the situation can't be resolved to your satisfaction, see if you can negotiate shorter lease terms with your landlord. According to Schorr, securing early termination rights can allow the medical tenant to move if an incompatible tenant becomes located nearby

Take legal measures, if necessary

Have your attorney pull the property records on the retail center and confirm that the area is actually controlled by your landlord.

"Often, what appears to be a single retail center turns out to be several adjoining properties with different owners and landlords," says Rosanes.

See if the tenant's actions can be construed as a violation of your lease by your landlord, and then lodge a complaint with the landlord, asking that the situation be rectified. You can also research whether the other tenant is in violation of any applicable laws or regulations, and if so, lodge a complaint with the appropriate legal authorities. You may also be able to sue the incompatible tenant for creating a nuisance, which may cause them to abate it.

 [Email this Article...](#)

[Back to Top](#)