



Leasing medical space in today's market: A guide for landlords and tenants

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Medical and health care is becoming more visible today as urgent care centers open and medical offices move to traditional retail and office spaces. While leases and the leasing process are similar to leases for non-medical retail or office space, there are differences that landlords and their proposed medical tenants must understand and address to have a satisfactory and long-term relationship. Leasing medical space involves certain risks for both the landlord and the tenant. It is best to plan ahead and avoid any surprises. Note that introducing medical tenants into previously non-medical space may lead to a requirement for physical changes in the building. While it is important to work with a lawyer, here is a list of some of the most significant issues that both landlords and tenants must understand when initiating a medical lease.

What is different about a medical lease?

A landlord must first realize the nature of the medical business, the amount of traffic it will generate and its hours of operation in order to decide if it makes sense for his property. Consider the possibility of emergency care or performance of surgery and the possible need for ambulance services to the premises. Late night visits are not a problem for a retail location but may be for an office or apartment building. Rules and charges for after-hours usage should be spelled out in the lease agreement.

Lease Term

Since medical practices usually require installation of extensive and expensive equipment, short-term leases are not practical. The tenant may need at least a ten-year lease and also seek extension options. A single practitioner obtaining a long lease may want a cancellation clause in the event of death or disability. A typical provision says the election can be made within 60 days after the event or appointment of the person's legal representatives. Another choice is to allow sale of the practice upon death or disability without recapture or other impediments.

Medical Equipment

Certain equipment may be strictly regulated. X-ray, CT scan or other radiation producing machines need lead shielding. Both parties will want to be sure they are operating safely and the lease should provide for plans, certified by the tenant's architect, designed to avoid the possibility of damage to the premises and individuals in or near the premises. In addition to obtaining required governmental approvals or certificates of compliance, the tenant should also comply with all rules imposed by the landlord's or tenant's insurance companies regarding the elimination or amelioration of risk posed by x-rays or electromagnetic rays and/or fields. The tenant should have an endorsement in its liability policy providing protection against claims of injury from exposure to x-rays, etc., making sure to name the landlord as an additional insured.

Medical Waste

Most medical offices have medical waste which cannot be combined with normal rubbish. The tenant should expressly agree to properly dispose of any contaminated material, medical waste, or other articles which may be contagious or radioactive. Such waste must be in a secure place so that unauthorized persons or children cannot open or take the containers.

ADA Requirements

Some medical patients may have issues that make them prone to injury. Careful compliance with the ADA is necessary by both landlord and tenant so no claim of injury can be based on a failure to comply with the act. Curb cuts must be in the right places, ramps must not have too steep an angle, and doors must be sufficiently wide.

Medical Records

Landlords need access to leased premises to make repairs and show prospective lenders, purchasers and tenants. Medical personnel are required to keep confidential medical records whether in paper or electronic files. Tenants need the right to have any landlord representative accompanied by the tenant. If the lease ends and files and computers are abandoned, or for some other reason, such as eviction, not taken, there should be requirements for storage and destruction of such records.

End of Lease

The lease should clearly spell out the responsibilities for the tenant to remove any alterations, and records as noted above, at the end of the lease term. The tenant will want to provide at the lease signing that the tenant need not remove lead shielding or other special installations. The landlord will probably want the tenant to remove these installations or will want to make that determination before the lease ends in case it finds another medical tenant. Relocation clauses are becoming more common. If a landlord customarily includes a right to relocate a tenant to another location, the parties should make sure the provisions cover the extra time and expense involved to relocate a medical facility.

These are some of the basic issues that require understanding on the part of both landlords and tenants when venturing into a new medical space lease.

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