



Law: Early lease considerations for cannabis dispensaries (Part 1) - by Daniel Dornfeld and Gregory Carman

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New York has legalized adult-use marijuana under the Marihuana Regulation and Taxation Act (MRTA). Unfortunately, what that means for retail sellers remains unclear because the Office of Cannabis Management's regulations have not been released. Regardless, we know enough now to determine some considerations for leasing space as a cannabis dispensary.

Can you sell cannabis in that location? While cannabis sales will soon be legal, local municipalities have the right to disallow operators from selling in that municipality. To "opt-out" from allowing retail dispensaries or on-site consumption facilities from operating within their jurisdiction, municipalities must have enacted a new local prohibition law by December 31, 2021. Those who failed to pass a new prohibition law by that date are considered to have automatically "opted-in." Municipalities that timely opted-out may later opt-in. Prospective applicants can determine the opt-out status of each municipality by reviewing the municipality's code.

Can the landlord allow cannabis sales? Regardless of state statute, it remains a federal crime to sell marijuana. 21 U.S.C. § 841(a)(1) provides it is a crime to grow, sell or possess cannabis. Most shopping center owners have financed their property. However, most commercial mortgages provide that the property owner will not allow illegal activity to occur at their property. Accordingly, if a landlord leases space to a tenant to sell cannabis, and if the landlord's property is financed, that lease can cause the landlord to be in breach of their mortgage. Therefore, before spending too much time and money on licensing, designing and lease preparation, the tenant should first confirm

that the landlord will not be prohibited from leasing space by virtue of its financing.

We are seeing a lot of enthusiasm for enterprising businesses to sell cannabis. However, taking these considerations into account can save a lot of wasted efforts.

Editor's Note: Part 2 of this article will appear in the February 8th edition of the Long Island Section.

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