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Practice Area: Retail Real Estate

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As the holidays approach, many of us remember back to the excitement and buzz created by the elaborate window displays of the large department stores. However, in today's shopping centers it is the dynamic displays and specialty products featured in carts, kiosks, and pop-ups that are garnering consumer attention – and not just during the holiday season. These customizable sites are allowing entrepreneurs a unique opportunity to test locations, hone their practices, and experiment with new products while providing landlords with additional revenue and a creative solution to filling vacant space.

This area of leasing is called "specialty leasing" and while it has seen major growth in the last few years, it is not a new concept. Carts and kiosks have been a part of the shopping center scene for decades, but were primarily dominated by local mom-and-pops. Most recently, everyone from new startups to established national retailers are showing interest in the direct customer contact and temporary commitment offered by this type of leasing.

In addition to the more traditional carts and kiosks, pop-up stores are now providing another option for retailers and landlords looking for an alternative to long-term leases. A pop-up store is a temporary retail space often used to launch new products, feature seasonal displays, or clear overstock. These stores can be set up quickly and are often less expensive and cumbersome than a traditional cart or kiosk.

For retailers utilizing these leasing options, it's all about location, location, location. Specialty lease retailers count on the foot traffic produced by the surrounding stores so finding the right retail location is extremely important. Before signing a lease, retailers looking to enter this market should spend time scouting out locations and studying the traffic flow and the products or services offered by the tenants in the surrounding area.

Once a retailer finds the appropriate location, rent becomes the next item of importance. Understanding what constitutes reasonable rent requires research and, often times, consultation with an expert in specialty leasing.

From the landlord's perspective, specialty leasing can increase cash flow, make great use of otherwise vacant space, and increase foot traffic, which are of utmost importance as landlords face increased vacancies and more economic pressure.

However, when entering this area of leasing it is important for landlords to keep tenant mix top of mind. Avoiding direct competition between the shorter term retailers and the long-term tenants can be vital to protecting the existing landlord-tenant relationships. Because specialty leases are short term in nature and, therefore, not as reliable as the traditional in-line leases, it is important for landlords to carefully consider the effect that the presence of temporary retailers might have on their businesses. Landlords should be prepared to respond to the concerns of their current tenants and should have a clear plan as to how they will address tenant mix issues. Landlords should put careful thought and analysis into the appropriate locations and use parameters for these sites.

In addition, because the specialty leasing displays are often times open for all to see, well defined merchandising and signage requirements are an important part of any specialty lease. Landlords need to have appropriate controls in place to ensure that the presence of these retailers will enhance the image of the shopping center.

Any time you are entering a new area of your business, it is important to do your homework. The use of an experienced retail real estate attorney is the best way for a tenant or a landlord to ensure that they are being well represented in the negotiation of these or other retail leases.

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