

EXCLUSIVE USES IN COMMERCIAL LEASES – THINGS TO KNOW, INCLUDE, AND AVOID

- I. What Are Exclusive Uses.
 - a. An agreement by the landlord to limit other tenants' uses of the building(s) owned by the landlord.
 - b. Similar to radius restrictions which limit the ability of tenants to operate the same or similar types of businesses at other locations near the premises with the radius restriction.
- II. Where are Exclusive Use Clauses Common?
 - a. Retail – especially in strip and power centers.
 - b. Restaurants.
 - c. Medical office – especially in buildings with multiple specialties.
 - d. Industrial and General Office – not as common as most customers/clients don't often come to the premises to conduct business.
- III. Purpose of Exclusive Use Clauses.
 - a. Help increase sales for tenants.
 - b. Prevents competition from driving down sales.
 - c. Can be used as incentives for landlords to get tenants to open in centers.
- IV. Exclusive Use Clauses – Landlord Considerations.
 - a. Want to define the tenant's use accurately and as narrowly as possible.
 - b. Have an eye on future tenants what mix may be needed in the future.
 - c. Define affected area as precisely as possible.
 - d. Consider requiring a success component to maintain the exclusive.
- V. Exclusive Use Clauses – Tenant Considerations.
 - a. Want as broad of a definition as possible to limit competition as possible.
 - b. Think about any new products or offerings and include in definition of use.
 - c. Try to make it recordable against the property to memorialize restrictions.
 - d. Define affected area as broadly as possible. Think about other tenants' uses that benefit tenant and make Landlord protect those uses
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VI. Exclusive Use Clauses – Remedies.

- a. Want to try to dissuade landlord from violating the exclusive use terms.
- b. Consider right to terminate the lease, liquidated damages, rent abatement, release from radius restrictions.
- c. Tenants never want to rely solely on damages tied to loss of revenue because it can be difficult to prove in court.

VII. Exclusive Use Clauses – Related Clauses.

- a. Co-Tenancy – right to close or no obligation to open if a symbiotic tenant or anchor tenant closes or fails to open.
- b. Radius Restrictions.



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It was during Mike's college football career where he learned the true value of teamwork and how it impacts success rates. He brings those same merits into each client transaction where he works with individuals and organizations to ensure their needs are met through creative solutions and collaboration.

As a member of the firm's Real Estate, Zoning and Public Finance Service Group, Mike regularly counsels clients in all aspects of commercial real estate transactions, including providing advice on entity selection and formation, drafting purchase and sale agreements, offers to purchase, performing due diligence, and negotiating and drafting agreements with municipalities and other stakeholders. He has extensive experience counseling clients on land use and zoning matters, such as drafting easements and restrictive covenants, and providing advice regarding project requirements under local zoning laws. Mike also represents landlords and tenants in the drafting and negotiation of retail, health care, industrial, and office lease agreements.

In addition to his commercial real estate work, Mike advises clients on corporate matters such as business-to-business contract review and negotiation, business-to-consumer contract drafting and corporate governance issues. He also represents clients in M&A transactions, negotiating and drafting stock purchase and asset purchase agreements and performing due diligence research.