

WHEN SHOULD A MEDICAL PRACTICE HIRE AN ATTORNEY

By Michael Ulin, Ackerman & Co.



For many businesses, it is a practical decision to involve attorneys in important considerations. Regardless of size or specialty, medical practices require a knowledgeable real estate attorney just as much as they need a good accountant. While it may be tempting (and economically appealing) to attempt to handle real estate matters yourself, each advisor possesses a valuable skill set. A good attorney will ask questions you haven't considered, tailor documents to reflect the negotiated business terms, and provide guidance and overall risk management.

Stephanie Friese Aron, attorney with Pursely Friese Torgrimson, maintains that an attorney should attempt to foresee potential risks and limit expansive language contained in standard documents. "Additionally, a good attorney will facilitate transactions by shouldering the lion's share of document review and document management so that medical practitioners are able to continue focusing on the practice of medicine instead of administrative hurdles presented by real estate transactions," she said.

When considering typical real estate decisions like a lease renewal, expanding or opening a practice, or relocating, it is advisable to consult a real estate attorney. It may also be beneficial to direct questions involving property tax and assessments, leasing or subleasing issues, and property insurance issues to real estate specialists.

What Kind of Attorney Does My Practice Need?

While it isn't necessary to use a real estate attorney who specializes in medical real estate, some real estate issues are specific to medical practices. Hiring an attorney who has experience with medical clients help you more than hiring one without this expertise.

For example, a real estate attorney who specializes in medical property will know that leases for medical space need to contemplate the following issues, among others:

- Leasing provisions should have flexibility to add/replace physicians without landlord's approval
- Regulatory requirements such as Stark Law that are unique to medical practices
- Use provisions need to be broad enough to allow the equipment within leased premises
- Limitations should be included to effectuate a release of professional guarantors who retire or become disabled
- Contingency of lease obligations upon licensure required to operate the business
- Transfer and assignment due to sale of the practice without triggering default provisions

A real estate attorney is particularly important for medical practices wanting to purchase and/or build their own facilities. Your attorney should review zoning and land-use restrictions before you purchase a property in order to confirm that you would be permitted to practice medicine from that location.

Additionally, parking and access considerations are vitally important to the health of the practice.



Finding an Attorney

The selection process is not unlike finding a medical provider. A great first step in identifying a potential legal advisor is through your peer or colleague network for referrals. Get personal referrals and references for several attorneys and interview each one to find a good complement to you and your staff. Most legal professionals would be glad to set up an initial call or meeting for a reasonable charge and sometimes free of charge.

Before making a decision, inquire about the following:

- How many medical practices they've represented in connection with real estate issues?
- Their area of experience (medical group, landlords, etc.)
- Their experience in representing medical groups in non real estate transactions, including general medical group issues

Take the opportunity during this phase to clearly understand the economic expectations: the attorney's hourly rate, who will do the work, how billing will be handled, and whether you may be required to provide a retainer if the attorney should incur significant out-of-pocket costs.

How to Use Your Real Estate Attorney

In most cases, you'll be consulting your real estate attorney for issues of real estate law that deal with leasing. But don't hesitate to contact your attorney for matters relating to buying, selling or financing property, or litigation that arises out of real estate issues, such as a dispute over rights to land.

Make sure to understand your attorney's practice areas and the services provided by the firm. When you have a need outside the attorney's scope of expertise, don't hesitate to ask for a referral to a reputable lawyer with the specific skill set that you need. "Most importantly, when you have a legal concern, share it with your attorney to help highlight issues of specific concern. Questions raised up front can prevent litigation on the back end," added Stephanie.

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