

DEVELOPERS FACE A UNIQUE CHALLENGE WHEN MULTIFAMILY AND RETAIL COLLIDE (PART 1 OF A 3-PART SERIES)



As the retail industry continues to evolve, developers are focusing on the live-work-play concept to maximize the value of their retail projects. Developers must consider the most effective way to implement covenants, conditions and restrictions (“CC&Rs”) to regulate the use, appearance, and maintenance of the development.

Hartman Simons’ partner, [Jeremy Cohen](#), discusses provisions to consider when drafting CC&Rs for mixed-use developments, particularly when different businesses within the development have varied needs and objectives. The following is part 1 of a 3-part series.

“There has been a shift in the real estate industry over the past few years as a result of increased pressure from online sales, and developers are getting more creative with their projects,” Cohen continues. “Developers are no longer simply developing typical power centers with one extremely large anchor store—such as Walmart, Target, Home Depot, and Lowe’s—and several ancillary anchors—such as Best Buy, Ross, Bed Bath & Beyond, and Marshalls.”

Cohen points out that, “First, you need to have a general idea of what the project is going to look like and the developer’s vision before you can begin drafting CC&Rs,” Cohen tells [GlobeSt.com](#). “An attorney can only draft what they understand and what their client, the developer, requests.”

Developers have complex issues to consider when developing multiple use projects that contain retail, office and residential space. The developer must envision the finished project and convey that concept to the attorney crafting the CC&Rs. The attorney must understand the uses in each project, the interplay between various uses, and how long the developer will maintain control of the project. These decisions will dictate the way CC&Rs are crafted.

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