

Due Diligence Before Signing Residential or Commercial Lease Agreements

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As a real estate lawyer, a significant part of my practice involves preparing and negotiating commercial and residential lease agreements. At times, however, potential clients may decide to find a sample lease agreement online, or have their realtor prepare the lease, to avoid attorney fees.

Proceed With Caution

Because most commercial leases are for 5, 10, or even 20 years, the length of time you will be bound by the lease terms warrants hiring legal counsel to look after your best interests. This is equally important in a residential setting, as housing costs are generally the largest monthly or yearly expenditure. From both the landlord's and tenant's perspective, it is important to clearly and thoroughly set forth the terms of the agreement, whether it is a residential or commercial lease, to avoid disputes as to each party's responsibility and obligation. The most common issues that create disputes with lease agreements include:

1. Condition of the property was not thoroughly investigated.
2. Unclear language concerning the responsible party for maintenance and repairs.
3. Unclear language as to the type and amount of insurance required to be obtained by each party.
4. Notice and cure periods, as well as when late fees are triggered, are not clearly stated.
5. The language is not clear as to how the tenant may exercise an option for the lease term to be extended, known as a renewal option, nor does the lease clearly provide the rent for the renewal option and what happens if the parties cannot agree upon the new rent amount.
6. The lease was not signed as required by law or an authorized representative did not sign the lease.
7. Language does not address who owns alterations or improvements made to the property.
8. Unclear language as to if either party is obligated to repair or rebuild in event of partial or total destruction, or when a party has the right to terminate the lease in the event of destruction.
9. Failure to clearly state the conditions to be satisfied for the security deposit to be returned to tenant.
10. If tenant is given an option to purchase, the language fails to clearly provide the terms and conditions of said option and whether tenant's deposit for the option is non-refundable.

Be extra cautious when negotiating a lease with an option to purchase. An option to purchase requires the parties to not only set forth the terms and conditions to lease the premises, but also requires all terms and conditions of a contract be discussed and clearly set forth in the lease. Often the option to purchase provision is not given the time it warrants when drafting a lease agreement. As a result, this is a common cause for legal disputes.

Finally, commercial landlords should avoid using a previously-prepared lease agreement for a new transaction, even if the agreement was prepared by an attorney. Not only is each transaction unique, but the laws may have changed since the drafting of the previous agreement.

The value of thorough due diligence cannot be underestimated by both parties before entering into a lease agreement. For instance, have you determined the credit worthiness of the tenant or obtained a background check on tenant? Is the landlord responsive when repairs are required? Is the landlord financially sound or is there pending foreclosure or other lawsuits against the landlord?

Keep in mind that once a dispute arises with a lease agreement, the attorney must work within the language in the lease agreement. Many times disputes can be avoided or handled more expeditiously, if the lease clearly and concisely sets forth the terms of the agreement.

Many people hire an attorney to fix a problem once things have gone wrong in a transaction, and they often pay a substantial amount of attorneys' fees as a result. It is more beneficial, and less costly, to hire an attorney to protect you before a problem arises. Also, if a dispute arises, one of the biggest mistakes clients make is not contacting an attorney soon enough. Florida law is very specific as to landlord / tenant law and it is important you understand and follow such in your lease transaction.