The Need for Due Diligence Before Signing a Lease Agreement

By Tyra N. Read

As a real estate lawyer, part of my practice involves preparing and negotiating commercial and residential lease agreements. Because commercial lease terms are usually five, 10 or even 20 years, both landlord and tenant should consult with an attorney before signing a legally binding agreement. That way, they can establish and clarify the terms of the agreement to their mutual satisfaction, thereby avoiding future disputes about responsibilities and obligations.

It's not uncommon for lease-related disagreements to stem from such issues as:

- The condition of the property was not thoroughly investigated or disclosed;
- Which party owns alterations or improvements made to the property; or
- The time frame for terminating a lease in the event of destruction.

More frequently, problems with lease agreements are tied to unclear or ambiguous language pertaining to:

- The party responsible for maintenance and repairs;
- The type and amount of insurance each party must obtain;
- Notice and cure periods, as well as when late fees are triggered;
- Provisions for lease extensions/renewal options. These should include the lease rate upon renewal, as well as an explicit plan for resolution if the parties disagree on the revised rental amount;
- Which, if either, party is obligated to repair or rebuild in the event of partial or total property destruction; and
- The terms and conditions of a tenant's option to purchase (if applicable), including whether the tenant's deposit for the option is or is not refundable.

Often, the option to purchase provision is not given the time it warrants when the lease agreement is drafted. That's why I urge using extra caution when negotiating a lease/option to purchase. These agreements require the parties to not only set forth the terms and conditions to lease the premises, but also to discuss and clearly set forth in the lease agreement all terms and conditions of a contract.

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, the laws may have changed since the previous agreement was drafted.

It's impossible to overstate the value of thorough due diligence by both parties prior to signing a lease agreement. If you're an owner, have you determined the credit worthiness of the prospective tenant or conducted a background check on the tenant? If you're a tenant, is the landlord responsive to requests for repairs? Is the landlord financially sound or is the landlord facing pending litigation?

Keep in mind that once there's a dispute over a lease agreement, the attorney must work within the language in the agreement. Often, disputes can be avoided or handled more expeditiously if the lease clearly and concisely sets forth the terms of the agreement.

Many people will hire an attorney to fix a problem once things go wrong in a transaction and consequently, they're apt to pay substantial attorney fees. Usually, it is more beneficial and less costly to hire an attorney to protect you before a problem arises. However, should there be a dispute, I strongly recommend that you contact an attorney immediately. Florida statutes are very specific about landlord/tenant law and it is important that you understand and follow such in your lease transaction.

As a shareholder with the law firm of Becker & Poliakoff, P.A., Tyra N. Read handles a variety of transactions involving commercial and residential real property statewide, including sales, acquisitions, leasing and financing, closings, foreclosures and more. Read is a graduate of the University of South Florida and earned her J.D. degree from Stetson University College of Law. Please contact her at tread@bplegal.com.