

Real Estate Law Update March 2013

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Letters of Intent - Are They Worth the Time and Risk?

By: Sarah Yocum Rider

Letters of intent are often considered a necessary first step in a commercial real estate transaction, such as an acquisition, sale or lease. Parties, however, should carefully consider whether entering into a letter of intent is worth the time and risk. A poorly drafted letter of intent, particularly one with ambiguous terms, or lack of clear, non-binding language, will often impede a transaction or cause the parties to waste time and money.

Letters of intent are, when drafted correctly, non-binding documents that outline key terms to a business deal, while leaving the remaining issues (and the details of the agreed upon terms) to future negotiation and drafting. Most letters of intent include a defined length of time during which the parties will negotiate the comprehensive agreement, whether it be a purchase agreement or lease. The letter of intent should specifically state that either party may terminate the letter of intent at any time thereafter by providing written notice to the other party.

In order to avoid a letter of intent from legally binding the parties, it is important to specifically include a separate provision clearly stating that the provisions contained in the letter are not legally binding. Although a letter of intent is typically non-binding, it is very common for certain provisions in the letter to bind the parties, such as confidentiality, exclusivity/no shop and brokerage payment provisions. These binding provisions should be carefully drafted so it is completely clear that they are independent legally binding obligations and are enforceable.

Another common provision in a letter of intent is an obligation to negotiate in good faith. It is imperative, however, that this obligation to negotiate in good faith not be included as a binding provision. If it were, one party could claim that by not following through with the transaction, the other party breached the good faith obligation and could be subject to legal action.

Although letters of intent are often useful in establishing business terms of a purchase agreement or lease, parties should consider creating a simple term sheet and proceeding directly to a comprehensive agreement. If you do decide to enter into a letter of intent, it is important to have the letter of intent reviewed by legal counsel to make sure you are adequately protected. If you have any questions regarding letters of intent, feel free to call us.

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PA Act 129 Informs Landlords of When to Dispose of Tenant's Abandoned Property

By: Daniel T. Desmond

Pursuant to Pennsylvania Act 129, landlords and building managers now have some guidance on how to handle a tenant's abandoned personal property. Effective September 5, 2012, landlords and managers will have to wait either ten or thirty days before disposing of items left behind by tenants, depending on what notices are given and how a tenant relinquishes the leased premises. The new legislation attempts to settle a longstanding gray area in Pennsylvania landlord/tenant law over what actions landlords should take when tenants leave behind personal property after being evicted from or vacating leased premises. Although somewhat complex, Act 129 now answers questions such as how long must a landlord hold onto abandoned personal property, and what notice should a tenant get before landlord disposes of such property?

Under Act 129, tenants are now required to remove all personal property if a court order evicts a tenant or if a tenant vacates leased premises.

If a tenant fails to remove personal property and landlord has taken possession of the leased premises, Act 129 describes what notices must be given to tenant and when landlord can remove the personal property after such notices. There are different steps to follow whether tenant has been evicted or whether tenant abandons the leased premises. Either way, landlord must give a ten-day notice to tenant to notify landlord that tenant will retrieve the personal property. If tenant gives notice that it will retrieve the personal property, then landlord must hold the personal property for thirty days after the original notice is given to tenant. If tenant fails to remove the personal property within those thirty days, then landlord has the right to dispose of or sell the personal property and keep the proceeds (with any proceeds exceeding any outstanding balances to be returned to tenant). If tenant fails to notify landlord that tenant will remove the personal property within ten days, landlord can dispose of or sell the personal property in the same manner. If the court order to evict contains the statutory ten-day notice and thirty-day removal requirements described above, then landlord need not give tenant any further notice.

If the tenant's lease does not contain the statutory ten-day notice and thirty-day removal requirements, then landlord must give the ten-day notice and thirty-day removal notice not only to the tenant but also to any emergency contacts listed in the lease.

The key here is to include such notices in the court order to evict and in the tenant's lease to avoid landlord from being required to give additional notices. Landlord should also prepare form notices to notify tenants about these requirements.

The remaining provisions of Act 129 are fortunately more straightforward.

- Any notice to the tenant or emergency contact must provide that tenant is responsible for any cost of storing the abandoned personal property if tenant does not remove it within ten days.
- Landlord must exercise ordinary care with regard to the abandoned personal property.
- If no forwarding address is provided by tenant to landlord, landlord must hold any excess proceeds from the sale for thirty days and then, if unclaimed, may retain the proceeds.

If you need assistance with drafting these provisions and letters, feel free to contact one of our attorneys in the [Real Estate Law](#) Group.

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To Disclose or Not to Disclose ? The Answer is ... No Need to Disclose A Murder

By: Maria Di Stravolo Elliott

In our last *Real Estate Update* (dated June 2012), we reported the case of *Milliken v. Jacono*, which contemplated whether a murder/suicide at a home was a "material defect" requiring disclosure under the Pennsylvania Real Estate Seller Disclosure Law ("Seller Disclosure Law"). The Superior Court has recently decided that a murder/suicide is not a material defect. The Court's previous opinion, which was later withdrawn, held that a jury must review the evidence and make that determination as opposed to a judge.

In this case, the buyer sued the sellers, as well as the real estate agents and brokers, alleging that a murder/suicide should have been disclosed. The sellers and their broker had done their homework by speaking with representatives at the Pennsylvania Real Estate Commission and seeking advice from the Pennsylvania Association of Realtors Legal Hotline, both determining that the murder/suicide was not a material defect requiring disclosure. So, the sellers did not disclose the murder/suicide on the Seller Property Disclosure Statement. After the buyer bought the house, she became aware of the murder/suicide. In her case, she claimed various paranormal events transpired at the house and provided reports from real estate appraisers showing a decrease between 10% to 15% in value of the home as a result of the murder/suicide. The trial court, however, determined that despite such decrease in value a murder/suicide is not a material defect requiring disclosure.

Now, the Superior Court has affirmed that decision. The Court categorized a murder/suicide as "psychological damage" that did not fit into the categories of physical and legal problems listed as "material defects" under the Seller Disclosure Law, such as roof, basement, termites, structural, plumbing, electric, heating and air conditioning or legal issues affecting the title to a home. The Court discarded the decrease in value reported by the appraisers reports and questioned the assignment of monetary value to such an event, noting that for some buyers it would be adventurous to live in such a home.

The passage of time would also dissipate any monetary value of such a psychological damage (akin to the "George Washington slept here" phenomenon). Further, the Court was concerned about the "slippery slope" that such mandatory disclosure would create - would disclosure be required where a home was burglarized five times or where shootings occurred in the neighborhood or where bad odors emanate from a nearby sewage plant? The Court stood behind the legal precept of "*caveat emptor*," leaving it up to the buyer to investigate such psychological defects. Basically, the Court found that any such subjective defects should be left to the Legislature to include in its laws and not the courts.

The dissenting opinion, however, focused on the value aspect, noting that the very definition of a "material defect" includes problems having a "*significant adverse impact on the value of the property*." Further, the dissenting judge noted that the Seller Disclosure Law does not specifically prohibit any other categories of material defects.

For now, though, sellers are not under a duty under the Seller Disclosure Law to report murder/suicide events (and

other similar psychological defects), that is, until the Legislation (or the Supreme Court) decides otherwise.

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