



# NEWS FROM THE FIRM

October 2010

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Chris Griswold, P.C.  
A Business Transactions  
and Estate Planning Firm

## Memberships

- OK, TX & American Bar Associations  
Licensed in all OK & TX State Courts
- International Council of Shopping Centers
- Commercial Real Estate Council of Oklahoma City
- Oklahoma Renewable Energy Council
- CCIM Chapter of Oklahoma

## Links & Resources

Commercial Real Estate Council of OKC  
www.crecokc.com  
International Council of Shopping Centers  
www.icsc.org  
Oklahoma Renewable Energy Council  
www.ocgi.okstate.edu.orec

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## Message from Chris....

I drove to Tulsa earlier this week and the leaves are starting to turn. Gotta love Fall. Today I want to shed some light on a legal concept which you probably use every day but might not fully understand or appreciate. It's the term "reasonable" as it would normally appear within a purchase sale contract, a lease, a loan agreement or whichever document. Read more below.

## Defining "Reasonable"

At the end of the day, as with any legal concept, it's all about how a **court** will interpret the term. For example, let's discuss how a court will interpret the phrase found within a lease which reads, "...in Landlord's reasonable discretion..." *How will this interpretation occur?*

The court will employ the age-old "reasonable person test." *What is this?* This is where the court creates a fictitious, "reasonable landlord" who is basically **identical** to the actual landlord under the lease (obviously, in reality, there is no such person) and compares this fictitious, reasonable landlord's discretion against the discretion employed by the actual landlord (which created the dispute in the first place). It's basically a "Monday morning quarterback" approach to determine whether the actual landlord acted "reasonably" in utilizing their discretion. However, what factors will the court consider in creating this **identical**, fictitious, "reasonable landlord"?

Among other things, the court will look at the current, economic climate within which the actual landlord was operating (i.e., the post-2008 economic climate), the actual landlord's financial position, the tenant's financial position and creditworthiness, and both the actual landlord's and tenant's years of experience within the commercial marketplace. The court might also look at the actual landlord's and tenant's prior dealings and course of conduct and perhaps even the tenant's rent payment history under the lease. Basically, the court will try to re-create the same factual environment that the actual landlord found itself within prior to utilizing its discretion. Once the court has re-created this factual environment, the court's fictitious, reasonable landlord's discretion will be compared to that of the actual landlord so that, as nearly as possible, the court is comparing "apples to apples."

## What My Clients Are Saying....

"It has been a pleasure working with Mr. Griswold. He knows the commercial real estate business well and has been an integral element in our deal making process on some very key transactions."

*Kris Davis / Industrial Broker / Grubb & Ellis|LevyBeffort / Oklahoma City, Oklahoma*

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