

Message from Chris....

This month, we're going to talk about something you hardly ever hear about - the "**mail box rule.**" It's something that affects everyone.... Towards the end of 2012, with forthcoming tax changes looming on the horizon, property owners everywhere were selling property like it was going out of style (and for good reason). I had a client who was eager to close on a certain large, commercial warehouse space. The fact pattern gave rise to the application of the mailbox rule – something that sounds pretty dull...but isn't. ***The information provided below will apply to most everything you do with important mail.*** Check it out, and don't forget to click on my Facebook or YouTube links below to also see my short video on this material.

Importance of The Mailbox Rule

What is the Mailbox Rule? Simply put, the rule is something (out of old common law) which says that a written **offer** made by someone through the mail is effective upon the intended recipient's ***actual receipt*** of such offer. Likewise, the rule says that, absent language in the contract which requires that *actual receipt of such acceptance shall occur by or within a date certain*, the recipient's **acceptance** of such offer is effective "***upon dispatch***" (i.e., the date and time which the recipient physically places such written acceptance into the mailbox with a postmark upon it showing such date and time).

Facts: Basically, the parties wanted to close the transaction by 12/31/12. However, the property was encumbered by a lease (a contract) which gave the lessee a right to purchase the property before any sale could occur; such right to be exercised by tenant within thirty (30) days of tenant's receipt of notice of the proposed sale from landlord (seller). Long story short, the parties wanted to provide written notice to the tenant of the contemplated sale; thus asking the tenant to either accept (or not accept) a purchase of the property on the same terms as offered to the buyer (my client).

By the time my client approached me on 11/24/12, time was getting short.... Furthermore, the lease ***didn't*** have any language in it that required tenant's notice of acceptance (or non-acceptance) to ***be actually received by landlord by any date certain*** (just the language above which required such right to be exercised by tenant within thirty (30) days of tenant's receipt of notice from landlord of the proposed sale). The seller, seller's counsel, the brokers involved, my client, the title and abstract company (and their counsel) all suggested that landlord simply provide tenant with written notice of the proposed sale; thereby giving tenant thirty (30) days to either accept (or not accept) such offer. Since it was still only 11/24/12, with 12/31/12 still being more than thirty (30) days away, everyone felt confident that tenant's rights under the lease would be addressed and all requirements on the title insurance commitment

could be safely met and satisfied, and, if no acceptance (or non-acceptance) was received back by landlord by 12/31/12, then a closing on the property could safely occur on 12/31/12.

What's the problem here? What if tenant "*dispatched*" its acceptance to purchase the property on **12/22/12** (assuming that tenant received our written notice on 11/25/12 - the day after we mailed such notice to tenant on 11/24/12) and, given the increased number of parcels/packages deposited into the United States mail during the holidays, such acceptance wasn't received by seller (the landlord) ***until after 12/31/12?*** By that time, my client would have already closed on the property thus violating the terms and provisions of the lease (which, by the way, had lengthy damages and remedies provisions for violating tenant's rights). ***See the problem?*** The tenant's acceptance and dispatch of such offer on 12/22/12 would have, unbeknownst to either landlord (the seller) or my client (the buyer), already ***legally and validly occurred back on 12/22/12*** and, due to problems and/or delays with the mail, the parties would have closed anyway on the property thus violating tenant's rights.

Critical point to keep in mind.... Remember the mailbox rule for your own closings, other contractual dealings and come time to mail in your insurance premiums. Also, don't forget about this rule when timely exercising your lease options to extend the lease term (including when your tenants exercise their lease options).

What My Clients Are Saying

"Chris Griswold is the answer man. When I have real estate questions, Chris is quick to reply with solutions and advice that is right on target. I can always trust my clients to Chris' care knowing he will treat them with courtesy and integrity."
Darryl Meason / Broker Associate / NAI Sullivan Group / Oklahoma City, Oklahoma

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