

# TO RECORD OR NOT TO RECORD?

By CHRIS GRISWOLD, ESQ.

A question that comes up over and over again in my practice — from clients and opposing attorneys alike — is whether a lease document should be recorded in the relevant county's real property records office, usually the county clerk's office. Specifically, people ask, "What difference does it make whether the lease document is recorded?" Well, to answer this question, we must ask a couple more questions.

First, does the lease document contain sensitive information that you'd rather not be within the public domain? Remember, if the lease document is recorded in the public records, the lease document and all the information within it will become public information. So, for example, if the amount of rent you are paying is set forth within the lease — and it usually always is stated within the four corners of the lease document — and you don't

want other industry competitors knowing how much you're currently paying, or, more importantly, how much you will be paying in the future, then you might not want to record that lease. Other factors to consider in arriving at whether you should or shouldn't record would, among other things, be any exclusive-use provisions, any required co-tenancy provisions, any required minimum insurance policy limits, etc. expressly set forth within the lease. Remember, if you don't want someone else to know about all the terms of the deal you have struck, then you probably don't want to record the lease.

Second, is there another way besides recording the actual lease document itself to put the general public on notice about the existence of the lease document? Yes. Parties to a lease usually agree to record what is called a "memorandum of lease" instead of the actual lease itself. Why? The memorandum of lease is a much shorter

abstract of the lease document, usually only one or two pages. It still acts to put the public on notice about the existence of the lease but doesn't contain all of the sensitive information as set forth hereinabove. So, with a memorandum of lease, you can still get the benefits that come with recording the lease document while retaining custody of the sensitive information contained within the document you spent so much time negotiating over.

The point? Before recording any lease document, be sure to think through the questions set forth above. More often than not, you're better off not recording.

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