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News From the Firm

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### Message From Chris....

People often ask me: “...**what’s the difference between a tenancy at will and a tenancy at sufferance?**” Do you know? See below (and don’t forget to click on my Facebook or YouTube links below to also see my short video on this material).

### Tenancy At Will vs. Tenancy At Sufferance

The purpose of this article is to solely address the attributes of a tenancy at will vs. a tenancy at sufferance arrangement within the context of what happens at the natural expiration of a written commercial lease agreement when a tenant remains on the leased premises.

Simply put, if there’s a written lease and the lease expires naturally, by its own terms, whether a tenancy is at will or at sufferance depends upon one simple thing: **the consent (or lack thereof) of the landlord for the tenant to remain in possession.**

**If the landlord authorizes the tenant to remain in possession, the tenancy is at will (and becomes a periodic tenancy as soon as the tenant begins paying rent regularly). If the landlord doesn’t authorize tenant’s continued possession, the tenancy is at sufferance.**

***What’s one reason for us to have the legal fiction of the tenancy at sufferance and what are its attributes?*** Without it, the statute of limitations on adverse possession would begin running upon the natural expiration of the written lease and, upon the expiration of such required statutory period (15 years for Oklahoma, and 10 years for Texas), the hold over tenant could have arguably acquired fee simple title to such leased premises by bringing suit and demanding title to same by its simple adverse possession of the leased premises for the required time period above – something a landlord can easily prevent by declaring (in the written lease) that such holdover tenant’s possession of the leased premises after the natural expiry of the written lease to be one of a tenancy at sufferance. The payment of rent by tenant (and the acceptance thereof by landlord) during the tenancy at sufferance can raise arguments by either party as to whether there is a true tenancy at sufferance arrangement, since the acceptance of rent by landlord could be argued to be landlord’s tacit consent to tenant’s occupancy – subject to the written terms and provisions of the lease (which could squarely address these issues).

***What are the attributes of a tenancy at will and what are its strengths?*** An arrangement, usually unwritten, whereby the landowner permits the tenant to be on the property with no advance understanding as to the termination date or the amount of the payment of rent. This arrangement can, in the real world, also briefly follow the natural expiration of a written lease for a very brief time – until the tenant begins paying rent regularly (which is when a periodic tenancy is created and the tenancy at will terminates). A tenancy at will arrangement, even after being converted to a periodic/month-to-month tenancy arrangement by the regular payment of rent, can be conveniently terminated by either the landlord or tenant by giving advance notice to the other party of such party’s intent to terminate the leasehold (usually 30

days ahead of the desired termination date, depending on the circumstances), unless the lease says otherwise. Accordingly, while not required, the lease could provide that tenant can remain after the natural expiration date provided the tenant pays rent at some higher stated rate (usually 150% to 200% of the previous rate), not to exceed some stated period of time – thereby allowing the tenant some time flexibility for moving out while also guarantying the landlord a stated amount of rent (while the current tenant remains in possession) while a new, replacement tenant is being secured.

***The information presented within this article is of a general nature and is not intended to be relied upon as legal advice in any particular matter without first consulting qualified counsel.***

### What My Clients Are Saying

“Just a note to let you know how much I have appreciated your help in the past with lease preparation and certain lease particulars that the lay person may sometimes not be familiar with. You have demonstrated a good balance of getting past certain points of law that when considering the lease in its entirety, have a tendency to slow the deal process. As I continue to do more business with larger companies, especially public companies, your knowledge of what is relevant and what is not is of great benefit. I also value you not interjecting yourself in the business points of a transaction except when appropriate. I trust that we will be doing business together for many years to come.”

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