



Chris Griswold, P.C.

News From the Firm

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Message From Chris....

Listen up landlords, tenants, subtenants, brokers and lenders. Sometimes, for whatever reason, we do something so many times that we actually forget the significance of doing it. As regarding the typical commercial lease, there are certain provisions that, for some long-forgotten reason, appear again and again. But why? One of these provisions, the ***covenant of quiet enjoyment*** (which the Landlord owes to the Tenant), is really worth brushing up on. This should be helpful for everyone... (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Covenant of Quiet Enjoyment

Some anonymous person once humorously noted "...I have my mind made up so don't try to confuse me with the facts." We've all seen the covenant of quiet enjoyment expressed in the leases we negotiate. It ordinarily reads something to the effect of "... Tenant may peaceably and quietly have, hold and enjoy the premises for the term aforesaid...." ***However, what is this covenant, why is it there & what implications follow from the parties expressly addressing it in their lease?***

**What is it?** The covenant of quiet enjoyment is the legal mechanism which prevents a landlord (or anyone for whose conduct the landlord is responsible) from "interfering" with a tenant's use and enjoyment of the leased premises during the lease term. Interestingly enough, if this covenant is not expressly spelled out in the lease (or if the lease was made orally), the law actually ***implies*** (i.e., inserts) this covenant into the lease. When the law implies this covenant into the lease, the upshot is that upon such "interference" by landlord, the tenant doesn't have to pay rent and can even elect to terminate the lease.

**If the law *implies* it into every lease, why do I always find it written into every lease?** Even though the law implies this covenant into every lease, the parties to a lease can still modify and condition the enforcement of this covenant by tenant. Accordingly, when the language relating to the covenant of quiet enjoyment appears in the lease, ***it's actually restricting and conditioning tenant's rights - not enlarging them....*** That's why your lease reads that "...upon tenant's payment of rent and observance of all the terms and provisions of this lease as contained herein, tenant may peaceably and quietly have, hold and enjoy the premises for the lease term contained herein...." Remember, in the beginning, landlords' counsel drafted the leases to serve the best interests of landlords, not tenants. Since that time, due to all the leases that have been executed over the years, it has become a custom that Tenant will have to pay rent and perform all of their lease obligations **prior** to enforcing the covenant of quiet enjoyment against Landlord (which is reverse of how the law would otherwise imply).

***What implications follow from the parties expressly addressing it in their lease?***

Basically, once the covenant of quiet enjoyment is expressed (i.e., conditioned) in the lease, it's incumbent upon the tenant (and even the landlord) to carefully draft the lease provisions so that their interests are protected. Why? Upon seeing that the parties have chosen to negotiate their own particular terms as relating to the covenant of quiet enjoyment, the courts will not, absent certain circumstances, modify such negotiated terms. So, negotiate carefully and write well....

What My Clients Are Saying

"I take special care when selecting business partners to represent my company and look for those who exhibit the same levels of professionalism and integrity that I try to achieve. Chris Griswold definitely meets these requirements and is considered a very valuable member of the JOBO Properties team. I have no hesitation in recommending Mr. Griswold to handle your business and commercial real estate transactions."

*Darren Ford / Owner & Developer of JOBO Properties, L.L.C. / Oklahoma City, Oklahoma*

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