Chris Griswold,P.C.

News From the Firm September 2020

Message From Chris….

During this period of "rebuilding" for everyone, there are a couple of things to be mindful of…, things I've seen almost cause trouble already. Prohibited and Exclusive Uses, mostly in leasing situations, but also in some sales (in the form of deed restrictions). This is good stuff for everybody to know… (don't forget to click on my links below to also see my short video on this material).

Remember These Things During Recovery

Exclusive & Prohibited Uses. These are things that, while ordinarily found in other, existing, co-tenancy leasing situations, can come back and haunt either a broker or an owner while desperately trying to back-fill empty space. These leases are usually old, dusty and forgotten – but still very valid for other surviving co-tenants within a project.

Big Picture: Look at them, go find them, read them – you'll be glad you did.

They'll usually be written poorly, probably be over-reaching, and you need to carefully navigate around them with your prospective tenant (or purchaser). Ideally, if there's trouble, you want to make sure the incoming tenant (or owner) agrees to amend their normal operating routine, their menu, their signage (or whatever) to not infringe upon whatever the existing exclusive and/or prohibited use section contains. Depending on the circumstances, certain legal language and strategies will need to be employed to further protect the parties (more on that below).

Either way, they all have teeth, whether or not they're recorded in the relevant county records. And, they'll surely be enforced by the party who has the benefit of such protection – especially right now, while things are harder for most… And if you overlook them, it's difficult to unscramble the egg, making things worse and damages will begin to grow too quickly. If in doubt, you can follow this thought process….

First, you can get an opinion on whether the language is an issue (a great starting place) from qualified counsel.

Secondly, with that opinion, you have to make the decision on whether or not to approach the existing co-tenant or co-owner (within the project) about admitting the new tenant/owner or waiving their right to object. This second component is problematic. If they say "yes," then you're ok. However, if they say "no," then you've already been told "no," so proceeding with the prospect is already dead in the water.

So, before doing step 2, first talk long and hard with the prospect, the center's landlord (or owner) and a qualified attorney who can examine the documents – then get a consensus on what needs to be done before proceeding. Especially right now, this topic is something too easy to trip and stumble upon. Have a great month everyone.

What My Clients Are Saying

"I have used and recommended Chris Griswold for years on commercial real estate legal matters but when my mother passed away, I knew I had to call Chris. I've heard horror stories in the past of probates lasting well beyond a year, but Chris moved quickly in the probate process and was able to complete the process in less than four months." **Allan Meadors, Director, Cushman & Wakefield | Commercial Oklahoma.**

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.

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