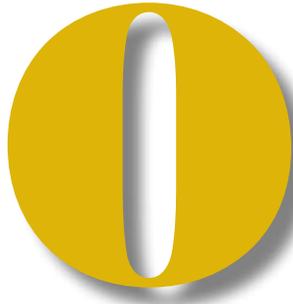


A Tenant's Right to Assign or Sublet a Commercial Lease



Over the past several years as businesses struggle to ride out the tough economic times, they

have had no choice but to downsize. Tied to commercial leases for more office or retail space than they need, an assignment of the lease or the subletting of the extra space seems like an attractive way of saving on expenses. In making the decision whether to assign or sublet, the tenant should first carefully examine its lease to determine whether the lease contains any provisions prohibiting or restricting assignment or subleasing. Commercial leases, like any other contracts, are governed by their terms. Therefore, whether a tenant has the right to assign a lease to another party or to sublet the leased premises to another tenant depends on the language of the tenant's lease with the landlord. If the lease does not contain language prohibiting or restricting the assignment or transfer of a tenant's interest, a tenant is free to assign or transfer all or part of its interest. A tenant is not required to obtain prior consent of the landlord, unless the lease contains language requiring the tenant to obtain prior consent of the landlord.

In making the decision whether to assign or sublet, the tenant should also understand the legal differences between the two concepts. An assignment of a lease is the transfer by the tenant of all of the tenant's rights and interest in the lease. In an assignment, although the assignee

tenant effectively steps into the shoes of the assigning tenant, the assigning tenant continues to remain liable to the landlord on the lease. With an assignment, if the assignee breaches, the landlord has the right to enforce the terms of the lease against the assigning tenant or the assignee tenant.

A sublease is different from an assignment. A sublease is a separate contract

remains liable to the landlord on the original commercial lease. With a sublet, the landlord does not have a legal right to enforce the terms of the original lease or sublease against the subtenant in the event of breach.

There are many different practical and legal considerations involved in negotiating and documenting the terms of an assignment or sublease including the legal consequences to



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between the transferring tenant and the subtenant. The sublease may transfer all or a part of the leased premises, for all or a part of the lease term, and under terms that are similar or materially different from the lease. As with an assignment, the tenant

the tenant under the assignment or sublease if landlord terminates the lease. Therefore, an experienced real estate attorney should be consulted so that the parties understand the consequences of such transactions and their competing interests are protected.



Barbara Anisko

Barbara Anisko is a principal of the Business & Commercial Litigation group. She has lead counsel experience in cases involving commercial disputes, real estate land transaction disputes, land development, land use and zoning disputes, eminent domain and condemnation claims, constitutional property rights claims and claims against state, county and municipal governments and agencies. Ms. Anisko can be reached at banisko@kaplaw.com (610.941.2457).

KS News



👉 **Amee S. Farrell** and **Neil A. Stein** of the Land Use, Zoning & Development group were contest judges of the Tenth Annual “Build a House . . . Build a Dream Contest for Kids” at Immaculata University on March 10, 2012. The contest challenged hundreds of 5th grade students to build three dimensional, model “dream homes,” and present their homes to the judges. This event is a yearly endeavor by Habitat for Humanity, the Affiliates of the Delaware Valley. Kaplin Stewart was pleased to be a sponsor of the event and encourage future architects, engineers and developers.

👉 **Neil A. Stein** of the Land Use, Zoning & Development Group, and **Matthew A. Cosenza** of the Real Estate, Business & Finance group, spoke at the Pennsylvania Bar’s Land Use Institute on Friday, April 20, 2012. Their presentation focused on the effect of the economy on land development.

👉 Four attorneys from various practice groups recently presented two roundtable discussions on issues encountered in a building project. The participants were **Amee Farrell** of the Land Use group, **Joshua Quinter** of the Construction Law group, **Dirk Simpson** of the Estate Planning & Administration group and **Adam Taylor** of the Real Estate, Business & Transactions group. The discussion was a walk-through of a real life project and covered:

- Acquisition of real estate and consideration of issues impacting its purchase
- Obtaining land use approvals
- Construction constraints
- Common legal pitfalls to avoid when building your project
- Impacts on long term business planning and personal assets

👉 **William K. Stewart** of the Real Estate, Business & Finance group was a presenter at Temple University’s Real Estate Institute on April 26, 2012 and May 24, 2012. The presentation focused on “Buying and Selling Distressed Real Estate,” and the realities and risks involved with distressed properties.

👉 We congratulate **Sandhya M. Feltes**, a principal of the Business & Commercial Litigation group, on two significant recent victories for her clients. Sandhya won a case for FGC Commercial Mortgage Finance and Fremont Investment & Loan in the New Jersey Federal District Court in an action where her clients were defendants. The plaintiffs claimed that FGC and Fremont violated the Truth in Lending Act, and the New Jersey Consumer Fraud Act, as well as asserting several other common law claims. The case was tried for three days in front of a jury, with expert witnesses and several fact witnesses on both sides. The jury was out for less than twenty minutes and found in favor of Sandhya’s clients on all claims.

In a second matter Sandhya represented Fairfield Henry (as landlord) in a case where class certification was sought on behalf of six plaintiffs in the Court of Common Pleas of Philadelphia County. After briefing and an extensive evidentiary hearing, Sandhya was able to prevent the certification of the class. This is a very RARE occurrence in Philadelphia and a huge win for Sandhya’s client.

Supporting our Community

Kaplin Stewart was a sponsor of the ALS Association of Greater Philadelphia’s annual “Hot Chocolate” event on March 8, 2012 at the Camden Aquarium, and a sponsor of the Philadelphia Children’s Alliance’s annual “Bear Affair” on April 26, 2012.

Kaplin Stewart also was a sponsor of the Anti-Defamation League’s “Walk Against Hate” in Philadelphia on Sunday, May 20, 2012 and had a team walking in the event. The Kaplin Stewart team was comprised of our employees and their families.



The Start of Something New... pennsylvaniaconstructionlawyer.com

At Kaplin Stewart, we pride ourselves on offering our clients sound legal advice, practical solutions and value for their dollars. We are excited to include another value added service to our repertoire: pennsylvaniaconstructionlawyer.com. This construction law blog is designed to discuss all things construction. We hope you will check it regularly for legal insight, industry observations, and much more. We also encourage you to subscribe to it, share it with your friends, and engage in the conversation by posting comments to the various discussions.

Meet Our Real Estate, Business & Finance Professionals

This month, we focus on one of our transactional partners, Matt Cosenza.

Matt is the youngest of eight children, and grew up in Avalon, New Jersey. He spent his teenage years hanging out at the local arcades, the "Hall" (Community Hall) and the place he referred to as his home away from home, the Bongo Room. He attended Wildwood Catholic High, where his winter weekends were spent mainly hitchhiking to Wildwood to attend "gatherings" at friends' houses. Winter down the shore was quiet, but the children did similar things to what is done in the Philadelphia suburbs, such as going to the movies, dances and hanging out with friends.

Matt later attended Saint Joseph's University and the Dickinson School of Law. He began his legal career in Harrisburg, relocated to the Philadelphia area, and after a few years of dreading the commute, ended up in Blue Bell. Matt has worked at Kaplin Stewart for about 15 years. He was trained in the real estate area by his mentor and friend, Bruce Meloff, who painstakingly taught him the fine art of legal drafting, and, for those of you who remember Bruce, the art of worrying about everything!



Matt Cosenza

The main focus of Matt's practice is commercial real estate, but there is much overlap in the areas of corporate, employment and related transactional matters. Most recently, and unfortunately, loan workouts also have become a significant part of his practice.

Matt's wife, Maureen, has informed him on many occasions that he has far too many interests outside of work. He started brewing his own beer about 20 years ago because he loved to taste new and different beers and to save some money. After recently having an addition put onto his garage solely for the purpose of having a place to brew beer and store his various brewing equipment, it is clear that the "saving money" part of brewing no longer applies. He does, however, still appreciate fine beers, and currently has three beer taps in his basement bar featuring his locally homebrewed beers. He also has become a certified beer judge by passing the Beer Judge Certification Program.

In addition to brewing beer, Matt spends his time away from the office playing golf, coaching his three children, Victoria, Matt Jr., and Alex in their various sporting endeavors, hunting, shooting and fishing.

Do You Know...

Although employers generally have no duty to report criminal conduct by their employees, there are exceptions to that rule. With the continued intermingling of employer and employee-owned technology, it is becoming more common for employers

§ 2258A, a Federal law which requires any provider of "electronic communications service" or a "remote computing service" to report information about an employee's suspected misconduct to the National Center for Missing and Exploited Children. That law includes all businesses that provide email to employees, and its penalties for violations

are severe. A New Jersey employer also was held liable to the wife of an employee where the



to discover possible criminal conduct of their employees. An example: An employee uses a personal laptop to access remotely the employer's computer network. The employee brings the laptop to the employer's IT professional for technical assistance. The IT professional discovers child pornography on the employee's laptop. The employer must report the employee under 18 U.S.C.

employer was aware of the employee's conduct involving the wife's minor child but the employer took no action. Employers who allow the intermingling of personal and company-owned technology may not be obligated to search that technology, but must report misconduct when discovered.

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Legal Perspectives

Have you Looked up Your Reviews on the Internet?

Research shows that review Web sites – think Yelp.com and Angie’s List – influence consumers to make choices. As a business owner, if you should receive a scathing review, what can you do? If the review is untrue and harms your reputation, you could have a claim for libel. In Pennsylvania and New Jersey, you have one year from the date of publication to bring suit. What can you do short of litigation?

If the posting is really inappropriate, the review sites will remove it but that can take weeks and the review may have been picked up on other web sites in the meantime. Yelp.com allows business owners who register with them to respond in a public post. Angie’s List has a dispute resolution process.

If the review is pure vitriol, there is little to which you can respond. If the review is factual, you can counter with a truthful account of the facts. But be careful of inadvertently creating a worse situation for yourself, i.e., risking the so-called Streisand effect. Barbara Streisand unsuccessfully sued a photographer for publishing a photograph of her beachfront property on the web. The photograph, however, was but one of many being used to show the problem of erosion occurring on the



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California coast. By bringing attention to the image, Streisand ended up inadvertently causing it to get more hits (6 versus 420,000) than before she sued, the opposite of what she had set out to achieve.

If you hire an attorney to draft a cease and desist letter, posters have been known to publish these letters as proof that the owner is trying to squelch them. There may be occasions where you must respond to set the record straight but choose your words carefully and refrain from sounding angry or worse, self righteous. Keep in mind that many of us who read embittered posts about businesses are able to dismiss them as not worth our time deciphering.



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Unless otherwise expressly stated herein, all discussions and opinions are based upon the law of the Commonwealth of Pennsylvania and the State of New Jersey. **Your comments or suggestions are welcome... Phone: 610.260.6000 • Fax: 610.260.1240 • www.kaplaw.com**

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