

Client Bulletin



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Oral Listing Agreement for the Sale of Real Estate

The "statute of frauds" originated in England centuries before the American Revolution. Ohio Revised Code § 1335.05 (part of Ohio's Statute of Frauds) provides that no action can be brought (in a court) to charge a defendant upon a contract for sale of land or an interest in or concerning land unless the agreement upon which such action is brought, or some note or memorandum thereof, is in writing and signed by the party to be charged (the defendant).

Real estate agents brought suit against a homeowner alleging claims for breach of contract and unjust enrichment based on lost real estate commission from the sale of the house pursuant to an oral real estate listing agreement (a previous written listing agreement had expired). One of the defenses of the homeowner was that an oral real estate listing agreement was unenforceable due to the Statute of Frauds on the basis that the oral agreement was with respect to an "interest in or concerning" lands.

The Fifth District Court of Appeals held: "Upon review, we find that a listing agreement is essentially an employment contract for professional services and does not constitute a contract for the sale or transfer of real estate as contemplated by the Statute of Frauds." *Crilow v. Wright*, 2011-Ohio-159 (Ohio App. 5 Dist.-Holmes County).

Is a "Notice to Leave Premises" Necessary in Commercial Evictions?

The answer to the above question is "yes and no."

Because commercial tenancies are not subject to Ohio's Landlord-Tenant Act, if the lease permits it, a commercial landlord can use "self-help" providing there is not a "breach of the peace." If permitted under the lease, when there is a default by the tenant, a commercial landlord can set out the tenant's furniture, equipment, etc., and retake possession of the lease premises without a court order, and the only notice, if any, prior to such "self-help" is as may be required by the lease. If, however, the lease does not permit "self-help" set out or if the landlord, for various reasons, might not want to use "self help" and instead use the courts, the statute pertaining to forcible entry and detainer (FED) actions/eviction actions requires that there be a notice to leave premises (giving at least three days notice).

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Another Reason why Landlords in Rental Applications Should Obtain Prospective Tenants' Social Security Numbers and Birth Dates

Most "form" rental applications available to landlords contain provisions for obtaining prospective tenants' Social Security numbers and birth dates. Understandably, in this age of identity theft, people are reluctant to disclose their Social Security number. Frequently, a landlord will permit a prospective tenant to not complete the Social Security number portion of the rental application, thinking that the Social Security number is not needed as the landlord does not do credit checks through a credit bureau/credit checking agency. However, doing so can cost a landlord if the tenant defaults on the lease.

Frequently, a tenant will move out before an eviction hearing after the tenant is served with a complaint for eviction and for back rent/damages, not provide a forwarding address (knowing that the security deposit will not be returned due to back rent owed, etc.) and not file an "answer" to the complaint for eviction and for back rent/damages. If the (former) tenant does not file an answer, the landlord can seek a default judgment for the back rent/damages. Because of a federal law, the Service Members Relief Act, a default judgment may not be granted against an individual unless there is filed an affidavit as to military service status establishing that the defendant against whom the default judgment is sought is not on active duty in the U.S. Military. Whether an individual is in the U.S. Military and is on active duty status can be checked on the internet through www.dmdc.osd.mil/appj/scra/scraHome.do. However (you guessed it), a Social Security number is necessary (and a birth date is helpful).

What's Not in a Name

In late June, the Ohio Supreme Court issued an 86 paragraph opinion permanently disbarring an attorney admitted to the practice of law in 1989, who had previously been disciplined by the Court in 1998 and twice in 2009. The respondent attorney was found to have "committed more than 40 violations of the ethical rules governing the conduct of attorneys in Ohio" and was incarcerated in the Marysville Women's Reformatory. The name of the case: *Disciplinary Counsel v. Character*. Respondent Dea Lynn Character, a sole practitioner, practiced in Cuyahoga County under the firm name Character, Character & Associates.

IRS Raises Mileage Reimbursement Rate for Vehicle Business Use

Due to higher fuel prices, the Internal Revenue Service has raised the reimbursement rate for mileage incurred in business use to 55.5 cents. The change will take effect July 1. The current reimbursement rate for vehicle use is 51 cents. Reimbursement rates for vehicle mileage incurred as a medical or moving expenses will raise to 23.5 cents. The mileage rate for vehicles used as a charitable contribution will remain at 14 cents.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

MANOS, MARTIN,
PERGRAM & DIETZ
CO., LPA

50 North Sandusky Street
Delaware, Ohio 43015-1926

Phone: 740-363-1313

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www.mmpdlaw.com