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Client Bulletin



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SOME OF THE HAZARDS OF USING INTERNET OR OTHER FORM LEASES OR RECYCLING PRIOR LEASES

Quite frequently, landlord and tenant disputes arise, occasionally resulting in litigation, when a landlord uses a form lease obtained on the internet or from someone else or a landlord "recycles" a lease (even one prepared by the landlord's attorney) for a different tenant, lease term, and/or property. Residential tenancies, whether for apartment or single-family homes or twin singles or duplexes, are subject to Ohio's Landlord-Tenant Act (the "Act"), and using a form lease not drafted for use in Ohio can be problematic if provisions in such a lease violate the Act (i.e., indemnification of the landlord, limitation of the landlord's liability arising under law, and a provision for payment of attorneys' fees). Because what is being leased as the premises in a residential lease, in a single-family residence or the typical twin single or duplex is decidedly different than what is being leased as the premises under an apartment or multi-family lease, not tailoring the lease to the type of residential premises can be troublesome for both the landlord and the tenant (i.e., apartment leases typically do not address lawn mowing, snow removal, or the like, while leases for a single-family home or a twin single or duplex need to address those items). It is the use of the leased premises, not the type of premises, that determines whether the lease is subject to the Act. If a single-family home, upper floor apartment or similar normally residential structure is used by the tenant for business or other commercial purposes and not as a residence, the Act does not apply and, therefore, many pro-landlord lease provisions that are barred in residential leases by the Act are permissible.

Residential landlords need to recognize that the Act can be, and has been, changed by the General Assembly. For example, Ohio Rev. Code § 5321.051, prohibiting certain persons from occupying residential premises located within 1,000 feet of any school premises, preschool or child daycare center, was added in July 2003 and amended in July 2007, and Ohio Rev. Code § 5321.131, prohibiting restrictions on flag display (of specific types of flags), was added effective March 2017. Thus, use of an old residential lease form can cause problems. Additionally, it needs to be recognized that under the Home Rule provisions of the Ohio Constitution, municipalities with a charter form of government may impose additional requirements or restrictions in landlord-tenant relations beyond those of the Act, providing that such requirements or restrictions do not conflict with the Act.

Occasionally, a landlord and a tenant will fail to recognize that Ohio Rev. Code § 5301.01, the Statute of Frauds, requires that a lease with a term of three years or more must, like a deed, mortgage, and land installment contract, be acknowledged before a notary public, et al. If a lease, whether residential or commercial, is defectively executed, whether because it is not signed by both the landlord and the tenant or if it is for a term of three years or more and is not acknowledged by both the landlord and the tenant before a notary public, et al., who properly completes the acknowledgments, the lease is defective. If the purported tenant under a defectively-executed lease takes possession of the leased premises and pays rent, the tenancy is implied in the law and the tenancy is subject to all of the terms set forth in the defectively-executed lease, except for duration. Under long-established case law, the duration of the term of the defectively-executed lease is determined by the provisions for payment of rent. Thus, if the lease provides for annual rent, even if it states that rent is payable in monthly installments, a year-to-year tenancy is created, but if the lease states the rental amount in monthly terms, the tenancy created is simply a month-to-month tenancy (which can have disastrous consequences for a landlord whose tenant moves out well before the end of the lease's stated expiration

date, or for a tenant who gets a 30 day lease termination notice long before what the tenant believed was the end of the term of the lease; this is especially true when there have been substantial leasehold improvements).

A landlord's use of an internet or other third-party form lease or recycling old leases, and a tenant not having an attorney review such a lease, can frequently be "penny-wise and pound-foolish," sometimes for the landlord, sometimes for the tenant, and sometimes for both.

A TASTE OF DELAWARE (A "RESTAURANT HOP")

Again this year, the Delaware Rotary Club is doing a restaurant tour in downtown Delaware featuring over 20 restaurants or bars and grills. Each ticket purchased (\$30 pre-sale and \$35 on the day of the event) provides eight coupons for redemption for food samples from participating restaurants or bars and grills and additional coupons can be purchased during the event for \$2 per coupon. The event is from 5 p.m. to 8 p.m. on Wednesday, June 13. Manos, Martin & Pergram is a sponsor (Steve Martin is a Rotarian), and pre-sale tickets can be purchased through Chris Herring at our office. All proceeds from ticket and coupon sales go to charity—70% to the Delaware County Hunger Alliance and 30% to the Delaware Rotary Foundation. The participating establishments are donating the food samples and their staff's time and the sponsors are covering all of the other costs so that 100% of the proceeds go to charity.

RAILROADS IN DELAWARE COUNTY-7 P.M., JUNE 13

At The Barn at Stratford, 2690 Stratford Road, Delaware, the Delaware County Historical Society is presenting a program, by Jack Hilborn, on the history of railroads in Delaware County. Admission is free due to sponsorship of the program by Hilborn Insurance and Willow Brook Christian Communities.

FASTEST GROWING PUBLIC SCHOOL DISTRICTS

Columbus Business First recently released one of its "Lists" which ranked all 49 public school districts in the Columbus metropolitan area by the percentage change in enrollment from school year 2015-2016 to school year 2016-2017. Number 1 on the list was Delaware County's Big Walnut Local School District (where the law firm's Andy Wecker is a member and past-president of the Board of Education), with an enrollment increase of 4.81% (school year 2016-2017 enrollment of 3,464). Second on the list was Olentangy Local School District with an enrollment increase of 3.58% (school year 2016-2107 enrollment of 19,716). Number 7 was Delaware City School District with an enrollment increase of 2.54% (school year 2016-2017 enrollment of 5,449). Buckeye Valley Local School District was different, however, as its school year 2016-2017 enrollment of 2,100 reflected a decrease in enrollment of 2.23% from school year 2015-2016. All four of these Delaware County school districts had class of 2016 graduation rates above 90% - Big Walnut at 95%, Olentangy Local at 98.3%, Delaware City at 92.6% and Buckeye Valley at 97.7%. For comparison purposes, the composite change in enrollment from school year 2015-2016 to school year 2016-2017 for all 49 districts in the list was 1.26% and the average 2016 graduation rate for all districts was 93.02%. Olentangy Local's 2016 graduation rate of 98.3% ranked it number 1, while Buckeye Valley, at 97.7%, ranked number 3.

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.

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