
CLIENT ADVISORY

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COURT DECISION EMPHASIZES IMPORTANCE OF CLEAR WRITTEN AGREEMENTS BETWEEN LANDLORDS AND TENANTS

A recent case decided by the Civil Court, New York County, again emphasizes the importance of putting agreements and understandings in writing, so as to avoid later disputes or misunderstandings as to the parties' intent.

Tenber Associates v. Bloomberg LP, NYLJ, 3/4/05 (Civil Ct., N.Y. Co.), was a commercial landlord-tenant case. Bloomberg, the tenant, had leased space in the landlord's building under a lease set to expire in September 2004. Bloomberg continued to occupy a portion of the space after that date, and the landlord brought a holdover proceeding to recover possession. Bloomberg's response was that it had remained at the premises after September 2004 because the landlord itself had urged it to do so, so as to avoid vacating too much of the building at one time, and to ensure a continuing flow of rent until new tenants were ready to move in. It contended that the landlord had brought the holdover proceeding only because new tenants had become available earlier than it had anticipated, and that Bloomberg had relied on the landlord's oral request that it stay in possession until June 2005.

After a hearing, the court held that Bloomberg had reasonably relied upon the landlord's oral requests that Bloomberg continue in possession until June 2005, and the landlord's assurances that it would be permitted to do so. Accordingly, the doctrine of estoppel precluded the landlord from enforcing the lease's written expiration date. The court reached this conclusion despite the existence of a detailed lease containing a "no oral modifications" clause and even though all previous modifications had been in writing.

In cases where the parties' conduct evidences an oral modification of a written agreement, courts will enforce oral modifications of agreements under the equitable estoppel and/or partial performance doctrines. Therefore, parties should carefully document modifications to leases and other agreements, to avoid later disputes and potential litigation over what the parties orally agreed to and whether the modification is enforceable.

RECENT CASE CREATES UNCERTAINTY CONCERNING REQUESTING TENANTS' SOCIAL SECURITY NUMBERS

Cooperative boards, condominium associations, and rental landlords routinely request that prospective and existing tenants provide their Social Security number (SSN) in conjunction with any application or renewal. The SSN is kept on file and used for purposes such as authorized credit checks, background investigations, and filing of Form 1099 with the Internal Revenue Service when interest is paid on security deposits.

A recent court decision has created some uncertainty concerning the circumstances in which a tenant may be required to provide his or her SSN in connection with securing or renewing a lease. The court in Meyerson v. Prime Realty Services LLC, NYLJ, 3/9/05 (Sup. Ct., N.Y. Co.), addressed what it described as "a question of nationwide first impression" as to whether a

consumer protection statute barred landlords from requiring a tenant to provide an SSN. The landlord, which did not already have an existing tenant's SSN on file, asked for it in connection with the tenant's application to renew her lease. The tenant completed the renewal forms but refused to provide her SSN, stating that she feared becoming a victim of identity theft if she disclosed the number. The landlord then allegedly advised the tenant that she could be denied a renewal lease and evicted if she refused to provide her SSN.

The tenant sued the landlord for a deceptive practice under New York State's consumer protection statute (General Business Law § 349). After discussing the history of SSN's and the increasing problem of identity theft, the court found no legal basis on which the landlord could demand the tenant's SSN or threaten to deny a renewal lease based on her refusal to provide the number. The court held that the plaintiff-tenant had therefore stated a valid legal claim against her landlord and that the case could proceed.

The scope of this trial court decision is not clear. The case does not address legitimate reasons that a landlord or board might have for requesting an applicant or tenant's SSN, such as performing a credit check or complying with IRS regulations. At a minimum, however, it is clear that if a tenant or applicant declines to provide his or her board or landlord with an SSN, legal counsel should be sought before further action is taken.

BORROWERS SHOULD INSIST ON RECORDING SATISFACTION OF MORTGAGE WHEN LOAN IS REPAYED OR PROPERTY TRANSFERRED

A New York statute (Real Property Actions and Proceedings Law § 1921) requires that, upon full payment of a loan secured by a mortgage, the lender must record a **satisfaction of mortgage** (or, at the borrower's option, deliver the satisfaction to the borrower). The recording of this document discharges the mortgage and removes it as a lien on the property. The statute provides that, upon a failure to record the satisfaction of mortgage within 45 days, the lender is liable to the borrower for \$500 or any actual economic loss caused, whichever is greater.

Lenders often neglect to record the satisfaction of mortgage when a mortgage is repaid, leaving the mortgage on record as a lien. In particular, this step is frequently overlooked when property encumbered by a mortgage is sold and the mortgage loan is discharged out of the sale proceeds at the closing of the sale. Typically, the problem is discovered only when the property is re-sold, and a title search is conducted shortly before the scheduled closing of the subsequent sale. At that time, when the satisfaction is requested, the lender frequently indicates that it may take several weeks or months to issue the satisfaction, thus risking a delayed closing or even default.

We have found that a strongly worded letter from the property owner's counsel to the lender's legal department, reminding it of the lender's statutory obligations and its potentially significant liability should a closing abort due to its violation of the statute, usually results in prompt issuance of the satisfaction. However, the best solution is to avoid the problem in the first instance by making sure the satisfaction of mortgage is recorded as soon as the mortgage is satisfied. While not covered by the statute, the same advice also applies to cooperative loans, whose repayment should be immediately reflected in a Form UCC-3 filing.