

## **Considerations for Buying and Selling Real Estate When Tenants are Involved - The Importance of the Tenant Estoppel Certificate.**

Real estate transactions are strange and often lead to unforeseen complications. Real estate transactions become further complicated when they involve tenant-occupied properties, be it commercial spaces, apartment complexes, or single-family homes. The purchase of a rental property comes with questions you don't get when buying an unoccupied building. As a seller, for example, you will need to consider what kind of notice must be provided to residents before the sale? As a buyer, you must take into account the cost of security deposits you will have to pay to tenants down the road when determining the final price to be paid at closing. And both parties will need to agree who is responsible for damages caused by tenants before the sale closes. The purchase and sale of tenant-occupied real estate can also further complicate the due diligence process. For example, it is extremely important to obtain and review all lease agreements potentially affecting the property. Another essential part of completing due diligence comes in the form of tenant estoppel certificates.

Tenant estoppel certificates are signed statements that certify facts concerning the tenant's lease and the status of its occupancy. According to Black's Law Dictionary, an estoppel statement is "a signed statement by a party certifying for another's benefit that certain facts are correct, as that a lease exists, that there are no defaults (by the landlord or the tenant), and that rent is paid to a certain date. A party's delivery of this statement estops that party from later claiming a different state of facts." Black's Law Dictionary, 572 (7th Ed., 1999). In short, these certificates are used to inform potential purchasers of the rights and obligations of existing tenants.

An estoppel certificate will usually memorialize the date the lease began, the duration of the lease, monthly rental amount, security deposit, renewal options, whether any modifications to the lease have been made, etc. It will also certify whether rent is in arrears or up to date, whether any subleases are in place, whether there are any oral agreements with the landlord or promises made by the landlord, etc. Additionally, estoppel certificates give tenants the option to explain any claims they might have against the landlord. In some circumstances, a tenant estoppel certificate can also require that the tenant certify whether it has used any hazardous substances on the premises or whether it has violated any environmental laws. By signing this statement, the tenant is prohibited from taking a contrary position in the future. This allows prospective purchasers to fully assess the economic benefits they will gain by purchasing a tenant-occupied property as well as potential liabilities they may face after assuming ownership.

Tenants are not required to sign an estoppel certificate unless mandated to do so by the terms of their lease. Luckily, most commercial and residential form leases contain clauses requiring tenants to sign estoppel certificates when requested by the landlord. If a tenant fails to sign an estoppel certificate as requested, it may be considered an affirmation of the facts contained therein, or it may be used as a basis for evicting the tenant for breach of the lease. It is therefore important to thoroughly review all leases affecting tenant-occupied property as part of your due diligence before closing.

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Author: Elizabeth (Libby) A. Klesmith

Libby is a civil litigation and business attorney at Tuesley Hall Konopa, LLP. Her practice areas include real estate, insurance defense, and trademark law. She is licensed to practice in Indiana and Michigan.

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