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KEVIN F. JURSKINSKI, ESQ.
COMMERCIAL LEASE NEWSLETTER

**Execution of Commercial Leases by
Disinterested Witnesses and Initialing of Page**

Recently I had an inquiry in regards to the execution of a Commercial Lease by disinterested witnesses, or more particularly, the question was phrased:

“Can an interested party, i.e. a member of the LLC, tenant entity or affiliated entity, act as witness to the specific lease agreement in question?”

Florida has a line of cases as well as a specific statute indicating that in the execution of wills and specifically the witnesses to such instruments must be totally disinterested.

Edward Brennan and Terrence Brennan v. Estate of Edward J. Brennan, Jr. 35 Fla. L. Weekly D 1645 (5DCA 2010)

Cites Florida Statute §733.207 which provides:

“Any interested person may establish the full and precise terms of a lost or destroyed will and offer the will to probate. The specific content of the will must be provided by the testimony of two disinterested witnesses, or, if a correct copy is provided, it shall be provided by one disinterested witness.”

A long standing concept in Florida Law which is that an interested person to a will, which results in that person receiving a conveyance or portion of the estate, should not be a witness to the will. This is based upon a number of theories, but essentially the fact is that the person executing the will must be deceased at the time the will is interpreted.

There are also questions of undue influence of a witness and/or question of the witness validating the mental capacity of the person executing the will. As such, Florida does not allow an interested party to be a witness to the will, and is quite specific on that particular point.

As to the Commercial Leases there is no specific statute like F.S. §733.207 in Florida relating to the fact that a witness to a contract is precluded from signing as a witness if the person has an interest in the actual subject matter of the contract. However commercial landlords, property managers as well as tenants would be cautioned to absolutely avoid such a situation.

Whenever it is called into question whether a lease was fully executed, was executed by the person (either in an individual capacity or a representative capacity) or whether there was something mentioned, something stated or represented as an inducement to the person executing the will the witnesses to the will might be called upon to provide testimony.

Clearly when a witness to a commercial lease is an interested party, for example an officer of the entity which is one of the contracting parties, etc., that testimony is going to be questioned by the trier of fact since the individual has an inherent bias or at least arguably it can be claimed that there is an inherent bias in favor of one of the parties to the lease.

As such and again, a specific and practical procedure for execution of commercial lease is to absolutely:

- a. Provide two disinterested parties as witnesses to witness the execution of the lease on behalf of the landlord and;
- b. Provide two disinterested parties to execute and witness the lease on behalf of the tenant.
- c. Verify that the lease is executed by the actual entity or an individual who is a party to the lease, be it the Landlord or Tenant and;
- d. Verify that if it is a recognized Florida entity, i.e. Corporation, LLC, etc. the person's actual capacity and authority to execute should be specifically identified. Example: John Smith as managing member of Commercial Tenant, LLC.

Initialing of pages It is also highly suggested in the case of lease agreements that each and every page be initialed by the signator parties and further, in the event that there is any interlineations (a change in one of the terms handwritten in), that such change or interlineations likewise be initialed on the specific page in which the change appears.

Commercial parties to a written lease should make sure that they eliminate all possibilities of any questions as to the validity of the lease starting with the formal formalities of the execution. There are numerous other issues that arise in enforcement of a lease as to terms and conditions and various facts that can arise from the interpretation of the lease. At the very least, the parties to a commercial lease should eliminate any

questions as to the enforceability of the lease from the practical standpoint of the proper and formal execution of the lease

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