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Stop and think prior to signing estoppel letters

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Every commercial real estate tenant knows to review any proposed lease carefully before signing it. But leases aren't the only important documents affecting a tenant's property rights. Estoppel letters may be less well-known, but they can be just as important to the landlord-tenant relationship.

An estoppel letter (sometimes called an estoppel certificate) is a certification as to factual information about a tenant's lease as of the time the tenant signs the estoppel letter. A landlord may request an estoppel letter in connection with a sale of a property or in connection with financing for the property. Both a potential purchaser and a lender will want to know the status of the leases on the property, as neither will want to commit time and resources for a property where there are problems. An estoppel letter is a good way to identify any negative issues before the property is purchased or money loaned on it without having to rely solely on statements from the landlord.

The landlord's attorney usually prepares estoppel letters, and they generally contain a number of statements which the tenant is asked to certify as being true and correct. They also typically provide that the landlord and the purchaser or lender are expressly entitled to rely upon the statements. Because misrepresentations or misstatements may be actionable, the tenant must pay attention to what is being presented in an estoppel letter.

Common provisions in an estoppel letter include statements as to the term of the lease, the monthly rent obligation, that the lease has not been altered or amended except as described on

the estoppel letter, that the tenant does not know of any defaults under the lease by either the landlord or the tenant or any acts or pending situations that could ripen into a default, whether the tenant has an option to renew the lease or purchase the property, and the amount of the deposit. Of course, the estoppel letter can contain many other provisions.

If a tenant signs an estoppel letter that includes information that differs from the lease, and a party such as a purchaser relies upon that information, then the tenant may be prevented (or estopped) from arguing about the error, and the statement could be binding upon the tenant. As a result, tenants should carefully consider the statements made in the estoppel letter.

The first thing a tenant should do when receiving an estoppel letter is to review the lease. A well-written lease will address estoppel letters. Even if the lease does not contain a provision requiring the tenant to sign an estoppel letter, the tenant may have other reasons to cooperate, such as maintaining positive relations with the landlord. Sometimes a lease will specify what provisions the estoppel letter must contain. Occasionally, a lease will even have a form of estoppel letter attached. Usually, the estoppel letter requirement in the lease will say how many days a tenant has to return the estoppel letter to the landlord.

Then, the tenant should carefully review the items in the estoppel letter addressing the terms of the lease. If there are any discrepancies between the terms listed in the letter and those in the lease, the tenant should change the letter to reflect the correct terms. It's espe-

cially important to carefully consider broad statements in the estoppel letter, such as that there are no defaults by either landlord or tenant under the lease and no controversies, disputes, or claims between landlord and tenant. It may be wise for the tenant to limit the language to reflect only its actual knowledge of the issue, in order to minimize potential unforeseen liabilities in future based upon facts unknown to the tenant.

Occasionally, landlords may try to insert provisions in an estoppel letter that could change the terms of the lease. Tenants should resist such provisions. If the lease is to be changed, both landlord and tenant should do so with an amendment that both sign. The tenant should also make sure the estoppel letter does not provide any new rights to the landlord or others that were not included in the lease.

Estoppel letters serve useful purposes in commercial real estate, smoothing the financing and purchasing process. But tenants are the ones who bear the responsibility for the statements agreed upon in the estoppel letter. The wise tenant will carefully review any estoppel letter before signing off on its terms.

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