



**small  
logo**

## STEIN LAW, PLC

*Recent Developments*

Big Picture. Small Details. Distinct Approach.

*Winter 2012*

### A Matter of Representation

Commonly commercial real estate Purchase and Sale Agreements contain specific representations and warranties, disclosing certain facts about the parties and the subject property. Obviously, given the liability of either misrepresenting or failing to represent material facts, these "reps & warranties" are often subject to great scrutiny and negotiation.

Naturally, Buyers will want the Seller to paint as full of a picture as possible about the status of the property, its history and any known defects/claims. While sellers want to say as little as possible and ensure that the buyer will perform its own investigation.

Nevertheless, while great attention often gets focused on whether a party is willing to give a particular rep, often easily overlooked are basic principles concerning the scope, survivability and timing of these representations. This can of course either be intentional or a victim of poor "legal representation."

When we work with these agreements, we strive to address a number of considerations beyond the mere giving of any "reps". Some important considerations for *both* Buyers and Seller include:

- **Timing** - When must the representation be true? At the time the contract is signed? At the closing? Both?
- **Changes** - Is there a duty on the part of the giver to update the representations or disclose changes?
- **Investigation** - Is there a duty of inquiry on the part of the party giving the "rep"? Or can they plea willful blindness?
- **Knowledge** - Who is making the representation? Whose knowledge matters? The out of state asset manager may not realize that the operations crew routinely dumps chemical in ground. Is the knowledge of each principal of the entity giving the rep imputed? If so, how can that be limited?
- **Damages** - Is there a cap on the overall damages from the failure of a representation? Is there exposure for consequential damages? Punitive damages?
- **Survivability** - Do these reps only matter until closing? What is the post-closing liability? How long does it last?

Without careful consideration and drafting, these provisions can undermine the intended purpose and create more uncertainty (and liability!) than clarity. As a practical matter, we often advise our buyer clients not to rely on any representations or warranties, but rather use these as a tool or red flag for areas that need further investigation. For sellers, we help give appropriate statements with defined scope and certainty.

More than just focusing on whether an agreement will include a given rep, we help buyers and sellers understand their liability and the big picture regarding the giving (or not giving) of particular representations and warranties.

For more information please call (480) 889-8948, send an email to [info@steinlawplc.com](mailto:info@steinlawplc.com) or visit [www.SteinLawPLC.com](http://www.SteinLawPLC.com).

### Four Year Anniversary

On December 1, Stein Law will celebrate its four year anniversary. We wanted to take a moment to again thank our clients, friends and family for their ongoing support.

### Awards and Honors



We are proud to announce that **Scott J. Stein** has been named by **Super Lawyers** as a 2012 Southwest **Rising Star**.

### Stein Law Recent Developments Archives

The following is a link to our Stein Law, PLC Recent Developments Archives:

[Recent Developments Archives](#)

## Practice Areas

Stein Law, PLC is a boutique business and real estate transactional practice offering legal services in the areas of:

- ◆ real estate purchase and sales, leasing and development;
- ◆ business transactions, joint venture and operating agreements, and corporate contracts;
- ◆ entity formation;
- ◆ loan financings, workouts and modifications; and
- ◆ hospitality development, management and licensing matters.

[Contact Us](#)

[Download Scott J. Stein's v-card](#)

(Attorney advertising material)

Copyright ◆ 2012 Stein Law, PLC. All rights reserved.