



STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

Recent Developments - First Quarter 2014

See This Quarter's Notable Closed Deals Below

Practice Point #45: Set the date

Oftentimes, critical dates for milestones in commercial real estate agreements are expressed as to-be-determined days keyed off of certain events. For example, in a commercial purchase agreement, it is fairly typical for the expiration date of the due diligence inspection period (with earnest money going hard) to be expressed as occurring "x days after" the opening of escrow. The closing date or other important contingencies are also typically determined based upon the time that transpires from another milestone date. In the context of a commercial lease, this timing conundrum can be found in provisions addressing completion of a build-out or commencement of rent payments, which can also be confirmed later on with a separate certificate signed by the landlord and tenant. Usually, these dates in a lease refer back to when possession of the premises is delivered to the tenant.

As a given matter, uncertainty as to the specific dates can lead to confusion and later frustration if somehow critical dates get missed or there is an argument as to the actual date. Even though some (but not all) escrow officers will prepare a critical date summary as a courtesy, often times those are qualified and have no legal bearing and relying on such a third party calculations must nevertheless be confirmed by the actual parties in order to have some merit.

As attorneys with a practice that focuses around written agreements, we find that it is usually better to agree upon critical dates in an agreement at the time as part of its execution to avoid confusion later on.

It's also important to understand whether an action or time period spans over "calendar days" or "business days". If a document uses those terms, each one needs to be defined. A business day refers to Monday through Friday, except for legal holidays, whereas a calendar day includes weekdays, weekends and holidays. Consider, for instance, the timing implications that arise if a tenant receives a notice of default on a Wednesday which, in accordance in the lease must be corrected in five days. If the tenant has five "calendar" days, the default must be corrected by Sunday. However, if that same provision allowed for five "business" days, the tenant could have up until the following Wednesday to correct the problem, since Saturday and Sunday would not factor into the timing calculation.

For that matter, time zones matter as well, as this is a global deal environment. Agreements should be clear as to whether notices or certain events need to be completed by the time where the property is located or perhaps the parties will prefer to use the time zone of associated with location of the seller's or buyer's corporate office, or the local escrow agent or national office. In any of these scenarios, the agreement must be clear which time zone will apply. This clarification is particularly important in Arizona since daylight savings time is not observed here.

Careful drafting at the onset can avoid issues and confusion later one. We draft agreements with certainty to make sure all parties are on the "same page"!

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

Stein Law, PLC is a boutique business and real estate deal firm focused on:

- Real estate acquisitions and sales, development and leasing (both tenant and landlord);
- Business transactions, operating agreements, joint venture structuring and corporate contracts;
- Loan financings, workouts and modifications; and
- Hospitality development, management and licensing matters.

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

- [Recent Developments Archives](#)

Below are some noteworthy 1Q14 Stein Law closed deals:

- Closed purchase of value-add operating retail shopping center with national and regional tenants using private equity and traditional financing (Jan, 2014).
- Recapitalization of equity and refinancing of underlying debt for large retail shopping center (Feb, 2014)
- Purchase of NNN asset with private equity and traditional financing (Feb, 2014)
- Development land sale (March, 2014)
- Sale of large multi-family property with agency loan assignment (March, 2014)

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