



STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

Recent Developments - Spring, 2016
See Closed Deals Below

Spring Training

The smell of fresh cut grass is in the air, flowers are beginning to bloom on the trees, and major league baseball teams are descending upon Arizona for spring training. Just as Arizonans and visitors are thinking about getting tickets for the first baseball games of the season, it is a great time for our clients that own and operate commercial real estate properties to dust off and update older lease forms that may be outdated or missing certain up-to-date concepts for today's game.

Below is a handful of the trending terms and concepts for consideration.

1. Digital Signing: Arizona adopted the Arizona Electronic Transactions Act allowing for electronic signatures on legal documents. Relevant statutes provide that the parties should agree to conduct the transaction by electronic means if a form provides for a signature to be completed electronically. Typically, a lease form will acknowledge acceptance of e-signatures. Clients should consider whether their current contemplates execution through electronic means and the necessary terms that should be added.

2. Notifications: The notice provisions in lease forms typically provide for notice to be given by an overnight carrier, the U.S. Postal Service, and sometimes provide for facsimile. More and more it is common to see notice provisions allowing for notices to be given via e-mail. Of course email addresses change and have their own challenges with confirming delivery. A good lease form will address these issues.

3. Virtual Tenants: A current trend in the office leasing marketplace is shared office spaces. Particularly in the context of shared workspace environments, it is important to ensure that the permitted use clause, along with transfer provisions, accommodate this newer type of use to balance tenant flexibility with a landlord's desired control. From a landlord's perspective, the lease form should include terms addressing these relationships and ensuring that there is accountability and means to control these nontraditional uses.

4. Advertising the Center Name: Some landlords want to include express language regarding use of the name of the shopping center and all associated trademarks, service marks, copyright, entity names, domain names, and logos. On the one hand, a landlord may want to require the tenant to use the name of the shopping center in all advertisements to designate the location of the tenant's business while the tenant is actively operating in the center. On the other hand, a landlord will want to be sure to limit a tenant's use of the name to such advertisements only and require that any other use is subject to the landlord's prior consent. In any event, with the advent of new digital advertising, the lease should address the virtual medium.

5. Recent case law: In an unpublished decision, the Arizona Court of Appeals recently held that a tenant was not able to recover over \$200,000 in base rent that had been overpaid over a thirteen year term when the tenant had discovered, at the end of the term, that the square footage of the premises was 271 square feet smaller than as set forth in the lease. *Gerlach v. Uptown Plaza Associates, LLC*, No. 1 CA-CV 14-0684 (Ariz. Ct. App. Jan. 28, 2016). The Court held that the tenant's claim was barred by the six year statute of limitations period that apply to contract claims. See *id.* ¶ 8. While the landlord failed to verify the square footage of the retail space following the initial buildout at the beginning of the term, the Court found that the tenant had the obligation to exercise reasonable diligence to determine the true square footage or to verify that the landlord had properly taken such steps following the buildout to confirm that the actual square footage of the premises matched that of the lease. See *id.* ¶ 13. Therefore, the Court ruled that the breach of contract accrued in 1999. *Id.* ¶ 14. The Court rejected the tenant's argument that its monthly overpayment of rent amounted to a recurring breach. See *id.* ¶¶ 15-16 ("Gerlach's ongoing rent payments did not transform Uptown's one-time performance obligation under the Lease to verify square footage into a monthly duty."). Landlords should take a lesson from this ruling and ensure that their lease includes express terms regarding remeasurement so that they have more to rely on than a general statute of limitations to avoid these types of claims altogether.

Stein Law routinely prepares and negotiates shopping center, office and industrial leases for both landlords and tenants. If any landlord of commercial property wishes to revisit its lease forms to incorporate any of the provisions described above, or for more information as to how we can be of service, please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com. Play ball!

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Be sure to check out our affiliated website,
www.arizonalegalopinions.com, which is focused on our practice area
dedicated to preparing attorney opinion letters for all commercial
real estate lending transactions.

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 recent noteworthy Stein Law closed deals:

- Represented purchaser of Infill property and redevelopment project (Oct, 2015)
- Assemblage Shopping Center purchase and ground leasing and development (Oct, 2015)
- Standalone legal opinion in connection with supplemental multifamily loan (Dec, 2015)
- Purchase of three-building office complex and lease up with joint venture, private equity and (Dec, 2015) and additional four-building office complex (Jan, 2016)
- Shopping Center vacant pad sale and development (Dec, 2015)
- Purchase and build-to-suit lease of restaurant location (Dec, 2015)



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