



Legal Notes

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BURT J. BLUSTEIN
MICHAEL S. BLUSTEIN
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of Counsel
DAVID S. RITTER,
of Counsel



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What You Need To Know Before Buying A Rental Property

By William A. Frank, J.D.
wfrank@mid-hudsonlaw.com

You've been presented with the chance to purchase an "income-producing" residential rental property. The current owner or a real estate broker tells you there are existing tenants who always pay their rent on time, so you are guaranteed to have enough cash to cover the property's monthly expenses. You might even have some left over, they say. It sounds like a great deal on the surface, right?

Not so fast. Before you jump into the landlord-tenant business, there are numerous factors that require careful consideration, planning, and legal guidance.

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Before finalizing the purchase, make sure that you and your attorney carefully review the current legal status of the property. Just because a building has four separate apartments, that doesn't automatically mean that the municipality recognizes them as such. The last thing that you want to do is wind up with a four-family that is actually a legal two- or three-family building. Your contract should require a certificate of occupancy from the local building department that all apartments in the building can be legally rented.

Make sure that you have sufficient cash reserves to cover several months of unpaid rent for each tenant that you have. Whether or not there is a written lease in place, there is never a guarantee that your tenants will pay their rent in a timely fashion. The bank that loaned you the money to purchase the property will have no sympathy if you start missing mortgage payments.

Going to court with your tenants is invariably expensive and time-consuming, particularly since New York has more laws to protect tenants than landlords. Quite plainly, a "professional deadbeat" tenant can string along court proceedings for months at a time to the point where a landlord simply wants the tenant out of the apartment, regardless of whether the unpaid rent is ever recovered.

Make sure that you have sufficient cash reserves to cover repairs/damages from a previous tenant before renting to someone new. Many tenants cause damage to their apartments by virtue of bad habits, such as failure to discard trash, which leads to pest infestation. Other tenants become vindictive when being evicted for non-payment of rent, and deliberately vandalize their apartments. Such damage almost always exceeds the amount of security paid at the start of the tenancy, so be prepared to spend money on repairs before the apartment can be subsequently rented.

If you're going to allow pets, require an additional security deposit. If you are going to allow a tenant to keep a pet in the apartment (which this firm strongly advises against, other than service animals), it is legal in New York to require an additional amount of security to offset potential damages caused by the pet.

Make sure your lease spells out who is living in the apartment. It is advisable for your lease to specify exactly who will be living in the apartment. Many times, a tenant will sign a lease and then allow other people, such as siblings, children, or significant others, to subsequently move in. Such additional unauthorized persons should trigger a default under the lease.

Under New York law, landlords must provide working heat and hot water systems to their tenants. If you are handy and have the time, you may be able to save some money when repairs are needed by doing them yourself. However, it may be necessary to have a repair person on call to handle these issues. Be financially prepared should the furnace give out in the dead of winter. Landlords must provide working heat and hot water systems to their tenants under New York law, even though it is perfectly legal to require the tenant to maintain their own account for heating fuel.

Be prepared in the event that the municipality in which the property is located either has an existing "rental property registration law" or has plans to enact one in the near future. Such a law generally requires landlords to apply for a rental property permit or license from the local municipality on an annual basis. Such laws may also require a landlord to provide a great deal of information to the municipality about the property, including the name of a local managing agent who is available on a 24/7 basis in case of an emergency if the landlord does not reside within a certain radius from the property location.

In addition to routine legal fees, maintenance costs, and insurance expenses associated with rental property ownership, there are many other issues that must factor into a reasoned and well-planned acquisition. It is imperative to secure representation from an experienced attorney who can guide you through the entire process, from pre-acquisition to leasing through all of the other phases of ownership, so that you have the best opportunity to realize profits from your investment.



Get It In Writing!

By Brian M. Newman, J.D.
bnewman@mid-hudsonlaw.com

A recurring feature of our daily lives is the **contract**. The word conjures up thoughts of a formal agreement between business persons, but in fact we enter into them every day. This is because routine acts such as buying groceries, purchasing tickets to a concert, or promising to help a friend move into a new home, can all involve contractual arrangements.

For most everyday contracts, there's no need to think twice about them. But at certain points in our lives all of us enter into more specialized contracts: renting an apartment; promising to guarantee a child's student loans; being hired for a long-term job; and buying a home. We can find ourselves on either side of the agreement, as the renter, guarantor, employee, or purchaser, or as the lessor, lender, employer, or seller.



For these “formal” contracts, how we create them is paramount, because in some circumstances we may find that when the other person involved breaks their word, we cannot enforce the deal. **New York, like most states, invalidates certain contracts unless they are in writing. This rule is referred to as the “Statute of Frauds,”** and it is derived from English law.

New York has incorporated the Statute of Frauds into a few different laws, but the ones most relevant to the typical person are Sections 5-701 and 5-703 of the General Obligations Law. Both of these statutes declare certain contracts to be void unless “it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent.”

What this means is that not only must the contract be in writing, but that it must also be signed by the person against whom you wish to enforce the contract, or a person who is legally authorized to sign on his or her behalf. An alternative is to have a “note or memorandum thereof,” which can consist of one or more other written documents signed by the other party that can be pieced together to show the essential core terms of the contract, although no one single document constitutes a contractual agreement. In the modern era, courts are more receptive to treating emails as signed writings that would satisfy the Statute of Frauds, but their acceptance is still not absolute.

Some examples of the types of contracts that the New York Statute of Frauds requires to be in a signed writing include:

- An agreement which by its terms cannot be performed within one year (example: an employment contract for three years)
- An agreement which by its terms cannot be performed before the end of a lifetime
- A promise to answer for the debt or default of another person (example: personally guaranteeing another person’s loan)
- A promise made in consideration of marriage, except for mutual promises to marry (example: a pre-nuptial agreement)
- A contract to sell real property or a contract to lease real property for a period longer than one year

The Statute of Frauds is a strict, formalistic device, which means that an unintentional oversight can result in you being unable to enforce an agreement. It is a harsh result, but one that the law’s creators understood to be a necessary side effect of cutting down on fraud and perjury.

The sole exception is that with respect to contracts solely concerning real property, if the contract is partially performed, a court can compel the complete performance of the contract. This, however, is an extraordinary measure that is not easy to impose, but it remains a potential lifeline for people who otherwise would find themselves out of luck.

In sum, when you find yourself entering into a contract with another person or company, and you want to be sure that you can hold them to their promises, make sure the contract is in writing, and make sure the other side signs it. Even better, make sure you have a competent attorney assist with the review and preparation of the agreement. This simple step could save you a big headache down the road if one day the other party decides to break their word.



Confidences Between You & Your Lawyer



By Rita G. Rich, J.D.
rrich@mid-hudsonlaw.com

This article provides an overview of the duty of confidentiality between a lawyer and his or her client. It does not deal with attorney-client privilege applicable to a lawyer’s or his or her client’s testimony, and/or the lawyer’s compulsory production of client information or evidence, for a governmental or judicial body (a topic for another day). **Under the term “confidentiality,” an attorney may not disclose a communication made by his or her client, or the legal advice that was given by the attorney in the course of the attorney’s professional employment by the client.**

This professional duty of confidentiality is currently addressed within the New York Rules of Professional Conduct, which numbers over 200 pages, and replaces an outdated Lawyer’s Code of Professional Responsibility that consisted of Ethical Considerations and Disciplinary Rules. Basically, confidential information is information gained during or relating to the representation of a client, whatever the source. “Relating” to representation means because of or relevant to actual representation. Casual discussion at a dinner party with a friend or relative who is not a client does not pass that test.

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Information is protected and considered confidential when, if disclosed, it is likely to be embarrassing or detrimental to the client, or when the client has requested that it be kept confidential. As an example in the comments to the rules, many clients would not want his or her lawyer to disclose tardiness in paying bills; the amount spent on legal fees in particular matters; forecasts about financial prospects; or information relating to sensitive client matters, such as an undisclosed possible divorce or criminal investigation.

The rules do allow a lawyer to reveal or use confidential information if the lawyer, within reason, believes it is necessary. The exceptions include the following:

- preventing reasonably certain death or substantial bodily harm (which could be at a later date);
- halting the client's commission of a crime;
- defending the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct;
- establishing or collecting a legal fee;
- providing information pursuant to another law or court order; and
- when the client has given informed consent.

There is also leeway in the rules under another exception - when "the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community." A lawyer may also reveal or use confidential information in order to obtain his own confidential legal advice in order to comply with the rules or any other law.

The relationship between attorney and client is one of trust, requiring full disclosure in strict confidence so that the attorney can provide effective representation.

- A client must feel free to discuss anything with his or her lawyer without fear of confidences being disclosed.
- Lawyers are obligated to select and train employees so that the sanctity and secrets of clients are properly preserved, and reasonable care should be taken to prevent unintended recipients from receiving non-disclosable information.
- Except with the consent of the client after full disclosure, lawyers may not use information acquired from clients for the lawyer's own purposes.

An attorney's obligation to protect a client's confidences and secrets continues after termination of the attorney-client relationship.

FREE EDUCATIONAL WORKSHOPS

Estate Plans That Work™

SEPTEMBER 13, 2016
3 P.M. TO 6 P.M.

OCTOBER 26, 2016
3 P.M. TO 6 P.M.

NOVEMBER 17, 2016
3 P.M. TO 6 P.M.

DECEMBER 13, 2016
3 P.M. TO 6 P.M.

Except as otherwise noted, the above workshops will be held at the BSRB Education Center, 10 Matthews St., Goshen, NY, 1st Floor

To register for a workshop, call **845.291.0011** or email **receptionist@mid-hudsonlaw.com**

We'll explain little-known pitfalls and the best methods to protect your loved ones' inheritance after you're gone.