

5 TIPS TO EASE BUYING AND SELLING A HOME AT THE SAME TIME

Most individuals must sell their existing home and use the proceeds from the sale to purchase a new home. As a result, the sale of the existing home must occur before the new home is purchased. If you are in this situation, it can be extremely stressful. Here are some tips to ease the process:

1. Consult a realtor or real estate broker before you buy your new home and before you sell your existing home. The realtor may be able to tell you which you should do first.

2. Investigate what options are available to you. If you purchase a home before you sell your home, find out whether you can qualify for a bridge loan or whether you can rent out your home, rather than sell it. If you can do either, it will reduce the pressure of selling your home prior to your purchase.

3. Retain the same attorney to represent you in both closings. If you retain the same attorney for both closings, that attorney will be familiar with the contingencies in both transactions and can attempt to structure both contracts to meet your needs.

4. Negotiate the closing dates on both transactions during the initial negotiation stage. Speak with the buyers of your home and the sellers of your new home to see what closing date is convenient for them. This way each party can plan accordingly and try to avoid unexpected delays. Keep in mind that very often it is difficult to plan a closing far in advance.

5. If you need the proceeds from the sale of your home to purchase your new home, the sale of your existing home must take place prior to the purchase. Typically, a seller must move out of the property prior to selling property. However, if you would like to remain in your home after it is sold but before you buy your new home, you may want to enter into a "use and occupancy" agreement with the buyer of your existing home. This agreement permits you to remain in your house after the sale of your home, until the closing on your new home takes place. Under this type of agreement, the new owner is paid for your use and occupancy during that time period. Also, funds are placed in escrow to reimburse the new owner in the event there is any damage to the property during your use and occupancy and/or your failure to move out on a timely basis.

In addition to these tips, you should work with an experienced realtor, attorney and lender, in order to make both transactions proceed as smoothly as possible.

NEW ATTORNEY AT FRK&B

FRK&B welcomes Danna M. Schnoll to the Firm. Danna joined FRK&B after working for Wilf & Silverman, counsel to the Wilf family, one of the preeminent builders and developers in the state of New Jersey. Danna practices primarily in the areas of commercial and residential real estate transactions and financings, landlord-tenant law, and commercial litigation. She has extensive experience in representing builders and developers throughout New Jersey in all aspects of real estate development.



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This newsletter is intended for general information purposes and does not constitute legal advice. You should consult with legal counsel to determine how the law may apply to your specific situation.



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SATELLITE DISHES AND ANTENNAS – IS INSTALLATION PERMISSIBLE?

Many tenants install satellite dishes and receiving antennas within the leased premises, and landlords question whether tenants are permitted to do so. The Federal Communications Commission ("FCC") issued an Order and adopted a rule which provides residential tenants with the right to install a receiving antenna or satellite dish within the leased premises. However, the tenant's right is not absolute.

Landlords can impose reasonable restrictions upon the tenant. Those restrictions may include limiting the number of satellite dishes and antennas, restricting the size, placement and/or method of attachment as well as prohibiting drilling or damaging the leased premises or the landlord's property.

According to the Order, a landlord cannot unreasonably restrict a tenant from having a satellite dish or receiving antenna within the tenant's leased premises, but the term "leased premises" includes only the dwelling interior and any outside area where the tenant has exclusive use, such as a balcony, patio or yard. The term "leased premises" does not extend to the outside walls, roofs, window sills or common areas on the exterior of the tenant's premises. This means that there can be no overhang whatsoever into common areas, including common air space. Therefore, a satellite dish or antenna may not protrude out of a window where there is no balcony below, because the air outside the tenant's window is beyond the air space leased to the tenant. Thus, a tenant whose lease provides for exclusive use of an outside area such as a balcony, patio or yard

will be able to place a dish in that area. The tenant is not allowed to install a satellite dish in any manner that damages or physically alters the leased premises. The tenant's right to install a satellite dish is limited to a dish the diameter of which does not exceed one (1) meter (3.3 feet). There are no express specifications for antennas except that they must be traditional stick-type antennas for receiving signals and not transmitting them.

If a tenant installed a satellite dish or antenna, the tenant can be evicted if installation caused damage to the landlord's property.

However, on the trial date, the landlord must prove that the tenant willfully or with gross negligence damaged the landlord's property. If there is no damage to the property, but the satellite dish or antenna is not within the "leased premises", a landlord can evict a tenant if the lease or the rules and regulations contain a provision which specifically addresses this issue. On the trial date, the landlord is obligated to prove that the restrictions are reasonable and the tenant's conduct constituted a "substantial" breach of the lease or rules and regulations. Landlords should be aware that even if an existing lease or rule or regulation prohibits satellite dishes or antennas entirely, the FCC Order controls because of the federal law of preemption.



A MUNICIPALITY'S OBLIGATION TO COLLECT GARBAGE

In response to the Court's decision in WHS Realty v. The Town of Morristown, the New Jersey Legislature enacted a law concerning the provision of solid waste collection services to apartment complexes. That legislation now governs the respective responsibilities and obligations of the municipalities and the owners of apartment buildings and complexes.

This article will not provide an exhaustive discussion with respect to the Act. However, certain key provisions will be outlined. This Act applies where solid waste collection services are provided to residents of a municipality. The governing body of that municipality has a choice. It can provide solid waste collection services in the same manner as provided to the residents of the municipality who live along public roads and streets. Alternatively, the municipality shall



reimburse a multi-family dwelling for the actual cost of providing that service, but not more than the amount the municipality would have expended if it provided the service directly to the multi-family dwelling, calculated as if the dwelling units were located along public roads and streets and the service provided curbside.

Reimbursement or the provision of services to multi-family dwellings shall commence for local budget year 2002 in municipi-

palities operating on a calendar year basis and local budget year 2003 in municipalities operating on a state fiscal year basis. The reimbursement payments are phased in over a five-year period such that during the first year the apartment owner receives 20% of the total cost of services. In the second year it is increased to 40%. The reimbursement will be 60% in the third year, 80% in the fourth year and commencing in local budget year 2006 or 2007, as appropriate, and each year thereafter, the municipality shall either provide solid waste collection services or reimburse at 100% of the cost.

Unfortunately, the law does not indicate clearly when in the budget year the services or reimbursement are to commence. It is a fair reading of the law that for calendar year municipalities the reimbursement or collection services should have commenced January 1, 2002 and for those operating on a fiscal year basis, as of July 1, 2002. However, municipalities remain recalcitrant in complying with their obligations under this law. Some have accepted their obligations forthrightly and have either provided the service or entered into reimbursement agreements with property owners. Too many others have delayed in reaching a decision internally and implementing that course of action.

For any further questions regarding the act and its implementation, or any problems you are encountering with your municipality, kindly contact Gary Gordon at FRK&B.

Owners can be held liable for damages as a result of mold growth in the common areas and in the tenant's apartment. However, in order to be held liable for the existence of mold in a tenant's apartment, a tenant must prove that the condition caused the injury and that the owner knew or should have known about the condition which caused the mold growth and failed to repair it.

In order to reduce liability, owners should be aware of the standard of care to which they are obligated to adhere (at the present time there is no federal or state law, just agency guidelines on the issue). Internal procedures for mold inspection, preventative maintenance and repair should be established. Tenants should be advised of the dangers of mold and procedures should be set up for tenant maintenance requests. Finally, leases can address the issue. The lease can require the tenant to immediately notify the owner of leaks or other sources that can lead to moisture in the apartment. A provision can

also be inserted in the lease in an attempt to shift liability to the tenant so that the tenant is responsible for any mold growth and resulting damages.

The law in this area is rapidly evolving. Therefore, owners are urged to stay abreast of recent developments in the law.

In order to be held liable for the existence of mold in a tenant's apartment, a tenant must prove that the condition caused the injury and that the owner knew or should have known about the condition which caused the mold growth and failed to repair it.

Claims against property owners and their agents for property damage or personal injuries as a result of mold growth or odor at the property are increasing. In landlord tenant cases, the tenant asserts that the existence of mold at the property affects habitability. This condition allegedly results in a diminution in value of the premises, warranting an abatement of rent. In other cases, the claims run the gamut, from breach of contract and negligence to nuisance and strict liability.

Mold is found everywhere and a majority of the molds pose little or no health risk to humans. It is only the toxic molds which present adverse health effects. Individuals who are particularly at risk are those with a weak immune system, persons with allergies and respiratory sensitivities, pregnant women, children and the elderly. Examples of some of the health problems are respiratory illnesses, nasal and sinus congestion, burning eyes, skin irritation and some central nervous system problems.

Mold thrives in damp, moist or wet surroundings. Exposure to mold can occur through inhalation or direct contact.

Recent Changes In The Law

EVICTIONS DUE TO DRUG ACTIVITY

The United States Supreme Court in the case, Department of Housing And Urban Development (HUD) v. Rucker, et al, 535 U.S. ___ 2002 issued an opinion in April which affirms the right of public housing authorities to evict tenants for drug related activity by the tenant, the tenant's family members, guests or other persons over whom it has control even if the tenant had no knowledge of the criminal activity. The Court affirmed HUD's regulations and its interpretation of a clause in the lease which prohibits drug activity on or off the premises by the tenant, a member of the tenant's household or any guests or any other person under the tenant's control. Such activity is cause for eviction under HUD's "one strike you're out" policy.

The Supreme Court also stressed that the statute, 42 U.S.C. Section 1437d(1)(6), defines "control" in the sense that the tenant has permitted access to the premises.

This case is specific to public housing

authorities which have mandatory lease terms and give the public housing authority the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug related activity regardless of whether the tenant knew or should have known of the drug related activity. This decision may also be applicable to other subsidized housing which must follow the same Federal Regulations. Query, whether it will extend to private housing, if a landlord includes a similar provision in its lease.

While the New Jersey Anti-Eviction Act permits eviction on short notice for tenants and for household members and guests who violate the Comprehensive Drug Reform Act, the law also requires that such violations occur on the premises owned by the landlord. The case law in New Jersey, prior to the Supreme Court's decision, indicated that in order to be subject to eviction, that the landlord prove that the tenant knew or should have known about the drug activity.



The first case tried in Essex County applying this Supreme Court decision was successfully brought by Rosalie Scheckel of FRK&B before the Honorable Mahlon Fast. The tenant was evicted because of her boyfriend's drug activity, even though she alleged she had no knowledge that he was selling drugs from her apartment.

A NEW DEVELOPMENT IN SECURITY DEPOSIT CASE LAW

Recently, the Appellate Division in Penbara v. Straczynski (A-6545-99T2), considered whether a landlord was obligated to send a tenant notice regarding deductions made from the security deposit.

In this case, the landlord filed suit seeking a declaration that he was entitled to retain the tenant's security deposit. The landlord claimed the tenant failed to provide one month's written notice prior to vacating and that the tenant damaged the apartment. The tenant filed a counterclaim seeking the return of the deposit.

During the tenancy, the landlord admitted he did not maintain the deposit in a separate interest bearing account, as required by the Security Deposit Act. Also, since the tenant told the landlord he could retain the deposit upon vacating, the landlord kept the deposit and did not send the required notice

as to its disposition. The lower court determined that the tenant was entitled to a return of the deposit because the landlord failed to send the letter and because the landlord failed to deposit the security in an interest bearing account.

The Appellate Division reversed the lower court and remanded the case for a new trial. In doing so, the Court made three



critical determinations: (1) a tenant's remedy for a landlord's failure to place the security in an interest bearing account is to have any unpaid rent applied against the deposit, not a forfeiture of the deposit; (2) when a case involves an offset by the landlord, the

trial judge must determine the amount of the offset and if it is greater than the deposit, there is no deposit to return to the tenant and no valid basis for enforcing the notification requirement of the statute; and (3) in certain instances, the Rules of Evidence can be relaxed in the Small Claims Section of the Special Civil Part so that a Court may consider a landlord's receipts, rather than excluding them because they are hearsay.

While the Court's decision seems to relax the burden imposed on landlords to send a notice regarding deductions from the security deposit, landlords should still send the notice. The holding in this case could potentially be limited to the facts of this case because the tenant here specifically told the landlord on the day he was vacating to keep the deposit. Also, it is possible that a Court could find that a deduction was wrongful and as a result, impose upon the landlord the mandatory penalty of doubling the amount of the deposit wrongfully withheld.