

JUSTIN S. DANIELS

PRACTICAL LEGAL TIPS



Poor Drafting Renders Option to Purchase Property Unenforceable

Blackberries, text messaging and instant messaging have resulted in a culture that worships speed at the expense of precision. I see this effect every day when people explain transactions to me that they wish to pursue only to leave out important details that they either had not considered or were in their head and did not make it into the email.

I recently encountered a court case that demonstrates this principle and its disastrous consequences. A landlord and tenant hastily entered into a lease where the tenant was leasing "premises" defined as approximately half the available office space. The parties further agreed that the tenant would have the right to purchase the property. The parties, however, in their haste, failed to define what property meant. The tenant exercised its right to purchase the property, however, the landlord refused to honor the option. The parties predictably ended up in litigation over the word property.

Definitions of Property and Premises are not Identical

After both parties expended significant sums in legal fees, the court of appeals determined that the lease defined premises but the option to purchase was for the property. The term property, however, was not defined anywhere in the lease. The court concluded that the option failed and was not enforceable because it did not define the property subject to the purchase option.

Haste makes litigation waste. You may also not be aware that it's a good idea to file a memorandum of the lease in the county real estate records so any third party who wishes to purchase the property will have notice of the purchase option.

As always, your trusted legal resource for practical advice.

For more information about me, click below.

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