



Southern Nevada CCIM Chapter

PERSPECTIVE

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2019 SOUTHERN NEVADA
CCIM CHAPTER PRESIDENT

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RAY LUCERO, SENIOR VP
BANK OF GEORGIA

LEGISLATIVE UPDATE

What is Going On in the 2019 Legislature?

If you have not heard yet, there are several bills before the Nevada legislature this year impacting commercial real estate. This is a summary of a few of the bills as of the date of this writing.

There are several proposed changes to the laws regarding evictions. Many owners of commercial real estate are still using the summary eviction process rather than the lock methods under NRS 118C. Thus, changes to the eviction process will impact owners of commercial property, property managers, agents and others.

First, Senate Bill 151, as initially introduced would have lengthened the time for both residential and commercial owners to evict a tenant even if the tenant failed to pay rent. However, in a recent work session, several advocates in the real estate industry were able to provide amendments to Senate Bill 251. Most importantly, one of the amendments was that SB 251 would not alter the eviction process involving commercial properties. The Senate Committee on Judiciary approved SB 151 with the amendments and now the bill goes to the full Senate for vote.

Second, Senate Bill 256 appears to make changes to residential eviction processes only. However, Section 21 of the bill amends NRS 40.251 which provides the basis for a notice to quit for owners of "real property." In other words, this statute is used by most owners of commercial property when a tenant's lease has expired and the owner is seeking eviction. Whether intended or not, it appears that owners of commercial property would be required to give tenants inspection rights and the opportunity to correct deficiencies following a 30-Day Notice to Quit which could preclude obtaining possession for weeks, if not months. Further, under Section 22 of this bill, owners of "real property" would have to accept rent without late fees or other fees due from the tenant. There are advocates in the real estate industry that opposed this bill at the last hearing on the basis that it should apply to residential properties only. At this point in time, the Senate Committee on Commerce and Labor has taken no action on this bill.

New licensing requirements have been proposed under Senate Bill 230. In summary, the changes to NRS 645 would be as follows:



BY AVECE M. HIGBEE, ESQ.

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Drafting Tips for Composing Letters Of Intent

Almost all commercial real estate transactions that come across my desk begin with a letter of intent (“LOI”). The purpose of the LOI is to outline, in writing, the key terms of a potential transaction. Attorneys use the LOI to draft the terms of the underlying agreement (e.g., commercial lease, purchase and sale agreement, etc.). A well-crafted LOI can make the preparation and negotiation of the final agreement a much smoother process; however, the opposite is also true, a poorly-crafted LOI can easily cause confusion and require the parties to spend unnecessary time and money rehashing concepts that should have been addressed in the LOI. Although it’s recommended to have an attorney prepare the LOI, more often than not, the LOI is drafted by non-attorney real estate professionals. This article

therefore is meant to offer a few suggestive tips from an attorney’s perspective on how to construct a well-crafted LOI.

Tip #1. Clearly identify which terms are binding and which are nonbinding. An LOI is designed to be nonbinding (i.e., neither party is contractually obligated to perform). This provides both parties the flexibility to evaluate a potential transaction and back out if needed. To ensure the LOI is nonbinding, it is vital that it clearly states this intent (e.g., “this letter of intent is nonbinding in all respects”). There are, however, a few terms that drafters may want to be binding on the parties (e.g., exclusivity in negotiating the transaction and/or the obligation to keep terms of the transaction confidential). It is likewise vital that the LOI clearly states

this intent (e.g., “this letter of intent is non-binding in all respects, except for Section 1 and 2 which are binding on the parties”). It’s also good practice to state that the LOI is subject to the execution of the underlying agreement.

Tip #2. Be sure to include the key components of the key terms. Even though an LOI is meant to include the simplified versions of the key terms (the detailed terms are to be included in the underlying agreement), it should still include the key components of those terms. For example, if an LOI for a commercial lease simply states: “Guarantor: John Doe,” this will likely be interpreted to mean that John Doe’s guaranty will last the entire term of the lease. Trying to modify this after the fact (i.e., trying to cap the total dollar

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amount of the guarantor's liability, or having the guaranty burn off at a certain time during the lease term) might be viewed skeptically (why wasn't this brought up in the LOI?) and met with frustration. Moreover, ensure that all key terms are in fact included in the LOI.

Tip #3. Proof read and then proof read again. Ensure that the LOI actually says what you want it to say. Are the base rent numbers calculated correctly? Do the dates and deadlines in a purchase agreement fall on weekends or holidays? Are the terms correct? In one of my more recent commercial lease transactions, I received an LOI that mistakenly and incorrectly stated how common area maintenance was to be calculated. As a result, the client was forced to spend unnecessary time and money debating this issue with the opposing party, all of which could have been avoided if the drafter (and client) took greater care in preparing and reviewing the LOI. It's important to note that drafting attorneys pay very close attention to each word in the LOI when preparing the underlying agreement and negotiating its terms with the opposing party. Indeed, there are very few arguments that work better than: "We reject your revisions to the underlying agreement because they run counter to the terms in the LOI."

The LOI can be a very useful tool toward closing a deal, especially when it's prepared with care and attention. 

Jordan Peel is a transactional attorney with of the Las Vegas law firm, Marquis Aurbach Coffing ("MAC"). He can be reached at (702) 382-0711 or visit the firm's website at www.maclaw.com



