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Conservation Easements: Preserving American Farmland By Edward Thompson Jr.	12
Sign Clauses in Shopping Center Leases By Emanuel B. Halper	16
A Guide to MOMUPs By James A. Rosenstein	22
Lawyers, Foreclosure and the Fair Debt Collection Practices Act By Patrick A. Randolph Jr.	30
The Sad Demise of the Duty of Inquiry: Whodunit? By Peter T. Wendel	34
Rollovers Become Easier—But at a Cost By Louis A. Mezzullo	41
The Mathematics of Partial Interests in Property By Jerome J. Caulfield	44
Trustee Authority to Divide Trusts By Philip H. Suter and Susan L. Repetti	54

This Issue's Theme:  
Farming and Agriculture

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DEPARTMENTS	
CLE Corner	4
F.Y.I.	6
Section News	10
Technology—Probate	39
Keeping Current—Probate	51
Index to Advertisers	58
Keeping Current—Property	59
Probate & Property 1992 Index	62

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# Sign Clauses in Shopping Center Leases

By Emanuel B. Halper

**I**nadequate rights to display a storefront sign can be a death sentence to a retail business. The typical merchant knows and has always known that, if customers do not notice the store, they will pass it by and visit a competitor.

This principle was well recognized by downtown central business district (CBD) retailers. Except for department stores and other heavy advertisers, the downtown CBD storeowner's hopes depended on attracting the attention of pedestrians who were going to or from work, strolling about or on their way to buy advertised merchandise elsewhere.

Downtown store signs usually were not very attractive but more often than not accomplished their purpose, which was to be noticed. In the

downtowns, store signs came in all sizes and varieties. Some signs zoomed above storefronts, extending to and sometimes beyond second story windows; other signs sat demurely just above storefronts.

For some tenants it was not enough merely to hang signs against, and parallel to, buildings. They wanted their messages to hit potential customers in the face so they could not pass the tenant's store without being aware that there was a wonderful opportunity to shop there—at least for the time being. To avoid losing pedestrians who might actually look straight ahead while walking along a shopping street and not examine each show window, tenants demanded the right to install signs that would project from, and be perpendicular to, the buildings.

Early shopping center tenants understood little about the emerging shopping center culture. How could they? They had little choice but to adapt the knowledge gleaned from their accumulated experiences in the downtown environment to the new shopping center world. If the lease for tenant's store on Multnomah Street in Portland or State Street in Chicago provided the right to hang a huge sign above the storefront, the tenant wanted the same right in its lease for Lakeland Shopping Center in Southern California. In the early days, retailers were not sure shopping centers would attract customers in the first place and, if customers ventured as far as the sidewalk in front of the store, a tenant did not want to take a chance that it would not be noticed.



*Photo by George Futton*

Early shopping center landlords were a mixed group. Some were visionaries and understood instinctively that a hodgepodge of sign sizes and styles would make the project look undesirable. They worked hard to control sign policy. Others completely missed the point and, in their desire to accommodate every tenant's eccentricities, tried to accommodate every tenant's eccentric sign.

As a result, the first wave of shopping centers included some awful looking signs. Even when the signs themselves were reasonably attractive, the diversity of sizes, materials and styles produced a revolting visual effect. Fortunately, the first wave also included many shopping centers with an intelligent design control system that resulted in harmonious arrangements of tastefully designed graphics. Customers knew the difference and voted with their wallets.

Landlords and tenants who understand how important sign control can be to a shopping center and to the prosperity of each tenant in the shopping center should ensure that the lease contains appropriate clauses to protect their interests.

### **A Tenant's Need for Sign Permission**

Landlord-oriented shopping center leases tend to bar tenants from displaying signs visible from the exterior of the premises unless the landlord approves the signs in all respects. Sometimes a landlord's form lease forbids all signs unless the landlord approves the sign in advance.

Obviously, a chain store tenant or any tenant with leverage will not agree to such a provision. No tenant should. Unless a tenant modifies such a drastic restriction, it will be completely at the landlord's mercy. Suppose the landlord refuses to approve any sign.

A tenant's lease negotiator should not assume a common law right to display a sign on the tenant's store front. Unless a state legislature or court has established an implied right for a store sign in the state in which

the premises are located, a tenant should insist that the lease provide for the right to display signs. Although it is possible that a tenant that forgets to negotiate for an express right to display a sign might find judicial relief, why risk the expense and trouble of litigation for an outside chance to get nothing more than the tenant should get as a result of its lease negotiations?

### **A Landlord's Need to Regulate Signs**

Conversely, a landlord's lease negotiator should not assume that a landlord's client will have the right to limit or influence the display of signs on a tenant's store front under the common law. Of course, zoning ordinances generally contain sign limitations, but these limitations usually are not sufficient to provide a coordinated design scheme that will harmonize all the signs in a shopping center.

Unless a lease of an entire shopping center building or of the inside and outside of a part of a shopping center building contains a sign restriction, the tenant might end up with the right to maintain any sign at all on the exterior walls or roof of the building subject only to the provisions of the local zoning ordinance.

A tenant with the unlimited right to maintain signs on its exterior walls might abuse this privilege by displaying unattractive signs, excessively unpleasant signs and even downright ugly signs. An unlimited right to display signs might also be abused to subvert the landlord's effort to fulfill obligations to provide sign privileges for the other stores of the shopping center. That is because some zoning ordinances restrict a shopping center's permissible sign space to an aggregate amount based on the aggregate frontage of all stores in the shopping center. In these circumstances, every inch of additional sign space usurped by one anchor tenant will reduce the legally permissible sign space available for the other tenants.

The absence of a sign restriction in an enclosed mall small store space

lease can be even more destructive than the absence of such a clause in a community or neighborhood shopping center small store space lease. Store signs visible from the exterior of an enclosed mall are incongruous with the atmosphere most enclosed mall owners and tenants seek to create. Usually, the back is the only part of an enclosed mall shopping center small store visible from the exterior, and the public seldom gets to see any part of an enclosed mall small store or its store sign from the exterior of the mall. Most enclosed mall small store leases prohibit exterior signs, and those that do not probably should. Nevertheless, some older enclosed mall shopping centers permit exterior sign identification for even the smallest of mall tenants. They do so to their disadvantage.

### **Single v. Multiple Sign Limits**

Form leases adopted by department store, category killer and super-market tenants usually vest the tenant with considerable sign flexibility. Category killers, such as home improvement centers, are tenants of very large stores that carry voluminous selections of a limited number of merchandise categories. It is not unusual for these important tenants to insist that the landlord permit them to install any sign they want. In recent decades landlords preferred to avoid fighting with major tenants on this issue because yielding to a tenant's demands for sign flexibility provided a chance for the landlord to appear to be amiable during the lease negotiation without yielding on such crucial economic issues as granting the tenant the right to rent deductions in case of a landlord default. Prospective mortgage lenders also concentrated on clauses that dealt with rent payment and did not focus on sign policy. Lenders tended to approve leases that granted the tenant complete freedom to deal with its store sign as it pleased as long as the tenant's covenant to pay rent was not full of ifs, ands or buts.

Landlords became far more discerning and began to understand how repulsive many shopping centers had become in the 1970s when the lack of aesthetics led to a lack of interest on the part of customers and a lack of revenue for the landlords. A far larger group of shopping center landlords then gathered the courage to try to convince powerful chain store tenants to accede to extensive sign limitations.

The results of this effort are mixed. Many chain store tenants still rebel against the notion that their sign privileges should be limited in any way.

One common restriction proposed by landlords is that each tenant will be limited to only one exterior sign. For the most part this makes sense. How many signs are needed over a 30 foot wide storefront?

Although most small store tenants are willing to live with a single store sign, many anchor tenants want and in many cases need more. The tenant of a corner store might insist on the right to hang a sign on its exterior side wall as well as on its exterior front wall. A sign on the side wall may be especially important to a community shopping center tenant if the side of the store faces a heavily traveled public street. A prospective tenant negotiating a lease for a regional shopping center store located at the intersection of two enclosed mall walkways will insist on the right to hang signs facing each walkway or lose the opportunity to attract half of its potential traffic. Should the landlord agree? Of course. The landlord has nothing to lose and percentage rent to gain.

Some tenants demand the right to hang a second sign on the front exterior wall or on a part of an exterior canopy.

A community or neighborhood shopping center tenant may need a canopy sign in addition to its store sign. That happens when the storefront sign is oriented to pedestrians walking under the canopy and is not visible from the parking lot or a heavily traveled adjacent street. Here, too, the landlord should have no problem in accommodating the tenant's need.

**“Landlords and tenants who understand how important sign control can be to a shopping center and to the prosperity of each tenant in the shopping center should ensure that the lease contains appropriate clauses to protect their interests.”**

Some merchants fall in love with a slogan and insist on the right to exhibit an extra sign bearing the slogan. Some merchants contend that potential customers need to know that, if they would only venture beyond the storefront, they would find themselves in the wondrous atmosphere of the store or that the policy of the enchanting world beyond the storefront is embodied in such labels as “discount,” “RX,” “cut rate” or “supermarket.” These merchants may demand the right to exhibit one or more additional exterior signs to provide this information to the public. Others insist on posting signs giving their hours of operation.

If the negotiation concerns a small store situated in a long row of similarly sized stores, the landlord should try to avoid an agreement to permit extra signs because they might break the continuity of the architect's design scheme. However, a sensitively contrived additional sign is unlikely to tarnish the view of an anchor tenant's massive storefront.

Over the years, some chain store tenants have, at least for brief periods,

promoted more than one store name. A&P is an example. At one point its senior executives were unable to decide whether they wanted the stores to be called “A&P” or “WEO.” A&P lease negotiators sought authorization for two store signs—one with each name. Although the prospect of a storefront with two separate and massive store signs was viewed by landlords with some suspicion even then, they tended to be permissive. When confronted with the possibility that the tenant might be unwilling to sign the lease without flexible store sign rights, few landlords of those days were brave enough to champion aesthetic values. Some landlords claim they are braver today.

A tenant that customarily uses flat signs on its store windows needs to modify a form lease restriction against more than one storefront sign. Some supermarket chains, so-called discount department store chains, drugstore chains and category killers consider it essential to post window signs to promote current special sales. These signs consist of a message painted or silk-screened on a paper, cardboard or

plastic panel. By these signs, the merchant hopes to convince the public that something exciting is going on inside. It is usually neither feasible nor desirable for a landlord to attempt to control this kind of sign.

### **Product Advertising Restrictions**

One problem of yesterday's landlords that does not seem to plague landlords of the 1990s is third party sign sponsorship. Small neighborhood and downtown store tenants of the pre-World War II era could hope to avoid paying for their storefront signs by making a deal with one of their suppliers. A supplier could be convinced to pay for a store sign if its product were prominently mentioned. Thus, a potential customer might have been greeted with a sign divided into three parts. The left and right parts would display the familiar "Coca-Cola" symbol, and the middle part would tell customers they were about to enter "Sid's Luncheonette."

Landlords should prohibit product-oriented signs, and current shopping center tenant negotiators tend not to demand them. Although third parties did sponsor some signs in early neighborhood and community type shopping centers, few can be seen today.

### **Size and Style Restrictions**

The decades of struggle and debate over sign policy have yielded to a new era in which most tenants agree that sign control is necessary and not evil. A 1990s department store tenant lease negotiator may very well demand that the landlord direct the architect to develop a uniform design scheme for the shopping center's store signs when the shopping center's buildings are being designed. A department store lease negotiator might also insist that the landlord be prohibited from using the roof or exterior walls of any shopping center buildings for advertising either the shopping center or a product.

Few tenants debate the merits of a design scheme concocted by a

landlord's architect. Their principal interest is to be assured that the scheme will govern all similarly situated tenants and that it will be enforced fairly and uniformly.

A homogeneous design scheme obviously does not mean complete uniformity of letter design. It is acceptable and even desirable for each tenant's sign to maintain distinct characteristics. Imaginative designers are able to create an appealing sign arrangement even if the styles of the letters and the materials from which they are composed vary from store to store. A blend of distinctive lettering styles and materials can be very attractive, as long as the sign letters are approximately the same height, rest against the same background and hang at approximately the same distance above the ground.

Tenants of large anchor stores cannot be bound strictly by all aspects of a landlord's sign regulations. In particular, an anchor tenant that leases a large store with a large storefront should negotiate for exceptions to the sign regulations to permit its letters to be higher and wider. Good sense as well as good aesthetics dictate that a much taller and wider store should have a larger sign than smaller stores.

Anchor store tenants are jealously protective of their rights to maintain larger store signs. An anchor tenant might not only insist on exceptions to the sign regulations so that its sign can be larger than the signs of the shopping center's small stores but might also demand that its sign be larger than, or at least equal to, the size of all other anchor tenants' signs. Thus, a department store tenant about to sign a lease for space in a community-sized shopping center might insist that its store sign be the largest of the shopping center's store signs.

### **Signs in the Common Area**

A shopping center tenant must be aware of new advertising schemes. What about hanging signs in the interior courts of enclosed mall shopping centers? What about using closed-

circuit television projectors to flash commercial announcements on large walls, or massive displays of individual television monitors, or burying subliminal messages in elevator-type music?

The anchor tenant and any other tenant with the clout to get away with an attempt to tell the landlord what to do should insist on prohibiting all signs in the common area except the shopping center pylon sign, bulletin boards designating store locations, and signs directing pedestrian and vehicular traffic.

### **Pylon Signs**

A shopping center's pylon sign can be its most important sign. In many cases, a developer's inability to obtain local government approval of a suitable pylon sign tower may kill plans to build a shopping center on an otherwise desirable site. The visibility of some shopping centers from a main road might be so good that they will do quite well without any pylon sign at all.

Pylon sign policy should be considered separately for each of the three types of shopping centers (regional, community and neighborhood). The regional shopping center, usually anchored by at least two conventional-type department stores, targets middle- to upper-income groups and seeks to draw customers from a radius of approximately 35 minutes or longer drive-time. The community shopping center, usually anchored by a discount department store and a food supermarket, targets the low to middle-income range and tends to seek customers from an area within 25 minutes drive-time of the shopping center. The neighborhood shopping center usually is anchored by a food supermarket and serves all income groups within a 10 to 15 minute drive.

Regional shopping center developers favor a single pylon sign tower at each shopping center entrance. Although some planning and zoning boards try to limit a shopping center

to one pylon sign, many regional shopping centers have a pylon sign tower at each entrance.

Planning and zoning boards tend to prefer that regional shopping center pylon sign structures display only one sign and that the sign bear only the name of the shopping center. Regional shopping center developers would be happy to accede to this preference were it not for demands by anchor tenants. Many regional shopping center anchor tenants insist that the shopping center pylon sign structure make provision for the tenant's own sign as well as the shopping center's sign.

If only one anchor tenant demanded pylon sign representation, a landlord might be delighted to go along with the demand. However, over the years, conventional wisdom has dictated that a successful regional shopping center must attract more than one department store tenant. Regional shopping center developers know it is not easy to get a planning or zoning board to approve plans for a sign structure providing space for the names of three or four department stores in addition to the name of the shopping center. Developers also anticipate a difficult time when they negotiate the pylon sign clause with the department store leasing representatives. Which department store gets the largest sign? Which store will get top billing?

The name of the shopping center is far less important to the success of a community shopping center than the names of its tenants. Relatively few customers even know the names of the community shopping centers where they shop frequently. Community shopping center customers are inclined to identify a shopping center with the name of its largest store. Community shopping center leases tend to reflect this pattern, and community shopping center pylon signs tend to emphasize the names of the anchor tenants. Lease negotiators for anchor tenants could not care less about a community shopping center's name. They worry about their own signs, the visibility of their signs to

motorists traveling on the adjoining main streets and the relationship of the signs of the various tenants.

Pylon sign policy varies considerably among community-type shopping centers. Some centers provide pylon sign towers with panels identifying only the department store and the supermarket. The panels may be side by side or the department store sign may be higher than the supermarket sign. Sometimes a drugstore tenant is in a position to insist on representation on the pylon sign structure. Other community shopping centers provide pylon sign identification for all tenants.

A community shopping center developer would prefer to exclude all small store tenants from pylon sign representation. A pylon sign plan that attempts to find a place for every tenant is bound to be cluttered and likely to be unsightly. Furthermore, it is much easier for a shopping center developer to navigate pylon sign plans through the planning and zoning processes if sign representa-

tion is limited to one or two anchor tenants and it is still easier if the sign structure plans provide room for a single sign displaying the name of the shopping center only. An anchor tenant also tends to prefer pylon sign tower plans with provisions for only a few tenants as long as it is one of the few.

Nevertheless, it is not uncommon for a community shopping center customer to be greeted by a huge sign structure listing most, if not all, tenants' names when entering the shopping center. Although a motorist traveling busily along a main street or making a sharp turn into a shopping center entrance is unlikely to notice a small store's pylon sign panel, many small store lease negotiators persist in their belief that pylon sign representation is an essential ingredient for the success of their stores. Community shopping center landlords who are willing to allow a persistent tenant with good credit to be represented on the shopping center pylon sign structure are not hard to find.

**“A shopping center’s pylon sign can be its most important sign. In many cases, a developer’s inability to obtain local government approval of a suitable pylon sign tower may kill plans to build a shopping center on an otherwise desirable site.”**

A motion picture theater presents a special case for a shopping center's pylon sign policy. Motion picture exhibitors usually pass on a shopping center opportunity unless the landlord is willing and able to provide space for an attraction board at the main shopping center entrance and the attraction board is approved by the local zoning authorities.

As the name implies, an attraction board gives much more than the name of the theater. The point of an attraction board is to display the names of all films being exhibited in the theater. Motion picture theaters in downtown CBDs and the urban neighborhood bedroom communities did not need attraction boards. They relied on marquees to attract pedestrians and surface mass transit passengers. Modern shopping center designers place theaters too far from the adjoining main streets or roads for passing traffic to read or even see the marquee. Consequently, the attraction board becomes the only way theater management can entice the passing motorist.

Landlords of neighborhood shopping centers are more likely to agree to provide pylon sign space for all tenants than landlords of regional or community shopping centers. Rivalry among tenants is less likely in a neighborhood shopping center, and some tenants have very limited visibility to motorists passing on the main street.

### Conclusion

It is not possible to discuss every detail of sign negotiations in this article. However, when faced with a negotiation, a lawyer can come up with many answers by looking at the way humans project their personalities and attempt to attract others with grooming and conversation. People who want to be noticed display signs and slogans too (usually more subtly than supermarkets). Humans use various devices because they want to be appealing. Some

overdo it. Grooming is alluring, but overgrooming can be repulsive. The same principle applies to shopping center store and pylon signs.

Emanuel B. Halper is a lawyer and president of American Development & Consulting Corporation in Jericho, New York.



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