

Commercial Leasing *News*



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What Lies Ahead?

The CLE Program Pipeline

Did you ever wonder to yourself, where do these CLE subjects come from? Or do you say, I know more about that than anybody, and they should've asked me to join in it. Or anything like that?

Well, here's your opportunity. Here's what's in the early planning stages, and who to contact if you'd like to participate.

Emerging Issues Committee (Ken Samuelson (202)457-7342)

Judicial Decisions that Defy Common Practice - cases no mere mortal mind can explain, only a judge's.

Protecting Against Forfeitures - risks and how to protect against them.

Newest Clauses - recourse variations; deregulations.

Industrial & Warehouse Leasing (Marty Miner (212)644-4000)

The Synthetic Lease — a hybrid, financing (of course) device becoming used more and more for warehouse/industrial properties.

Things Unique to Warehouse/Industrial Leases — yes, there are issues peculiar to them and here one can hear what they are and how they can be dealt with.

Brokers, Who Needs Them and When — do brokers hate lawyers? Do lawyers hate brokers. Are either of them wrong? And, when does the broker earn (in a legal, not moral, sense) its commissions.

Assignment-Subletting (Bruce Cavitt (816)292-8220)

Landlord Consent - Lease Restrictions
Confounding Sale of a Business - how to

avoid getting tough clauses and how to live with those you do get.

Remedies (Orlando Lucerno (505)247-8860)

Tenant Remedies, If Any — what can tenant do and when. Can it leave, stop paying, cure, other things(!)?

Quiet Enjoyment - What is it, why, from whence, and whither headed?

Condition of Space - (Eugene Grant (503)222-9981)

Negotiating the Lease, The Art and Science — how to deal with various "types" of
(Continued on Page 2)

MANNY'S MUSINGS:

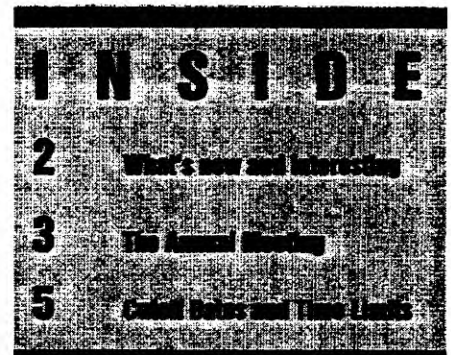
Magic Words

By Emanuel B. Halper

Real estate documents are much too hard to read. That's no secret. Clients profess not to understand them, and some clients refuse to read what they willingly sign. Judges scratch their heads when they're called on to interpret leases, mortgages and easements. Even lawyers can't stand reading other lawyers' real estate documents.

The mere sight of a lease or a mortgage is enough to bewilder a normal human being. The first page is crammed with type. The mysterious word WITNESSETH: stares at you, and the entire page purports to be a single sentence. Witnesseth's illegitimate sibling whereas follows and then follows again and again.

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See you May 15 in
Washington D.C.
for the Spring
meeting

*(Manny's Musings - Continued
from Page 1)*

Drafters find it hard to refer to objects the way normal people do. A drafter can't manage to say the cat. It's got to be said cat or such cat. Lease and mortgage readers are also burdened routinely with such bizarre word phrases as *aforesaid, hereinafter referred to as, herein, hereunto, and whatsoever.*

Say it again, and again

Single words don't satisfy a real estate lawyer's emotions. Why should a lawyer settle for a single word like *grant* or *convey* when he or she can substitute a long list of words that mean the same thing? Accordingly, some lawyers are inclined to use

grant, convey, bargain and sell, set over, and transfer instead. A deed description's reference point isn't defined as the *beginning point* or the *point of beginning*. No, it's got to be the *point or place of beginning* as if the *point of beginning* might be different

from the *place of beginning*. It is not enough to say that a lease or other document is *between* one party and another. A document is described as *by and between* one party and another. For some lawyers, it's not enough to insert a simple statement on a document's first page that the parties *agree* to everything in the document. For them, the word *agree* must be repeated in each section or paragraph. For others, the word *agree* isn't enough all by itself; they insist on *covenant* (which means *agree*) and *agree*. Still others demand more words and prefer it is *understood and agreed*.

Polysyllabic words are abundant, and monosyllabic words are in the minority in real estate documents. Few real estate documents drafters are willing to consider such a plebeian word as *start*. It seems much more elegant to use *commence*. Conversely, real estate document obligations don't *end* they *terminate*.

**Some judges
interpret "lacking"
as "excluding"**

Keep it auld

Archaic words are vastly preferable to contemporary words. Thus, all courses of a property description but the first must begin with *thence* instead of *then* or *nothing* at all. The sentence preceding a document's signature lines begins with *in witness whereof* instead of explaining that the parties are *formalizing* the document by *signing* it. Drafters are also reluctant to use an English word or phrase that everyone understands when they can show off their vocabulary and mystify their readers with such imported phrases as *inter alia, mutatis mutandis, nunc pro tunc, and e pluribus unum.*

Lease and mortgage drafters with a bit of experience never say *including*. Its *including but not limited to*, or it can be still wordier. I could live with that one if I had to read it only once per document. After all, some (possibly demented) judges have interpreted the word *including* as if it meant *excluding*. However, you'll see *including but not limited to* at least a dozen times in a fifty-page lease, and reading the extra words over and over again is boring and annoying. It's also unnecessary because a single sentence explaining that *including* always mean *including but not limited to* will do the job.

200 word sentences

That's not the worst of it. Although real estate lawyers prefer awkward words and phrases to easily understood words and phrases, a reader would have a reasonable chance of comprehending them if they were grouped in small clusters. Small clusters of words give you a chance to digest and swallow before coping with another mouthful. That's not in the cards for those of us who must read deeds, mortgages, leases and easements. Real estate docu-

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Understandable documents will be good for business

(Manny's Musings - Continued from Page 4)

ment sentence structure defies all reason. In real estate documents, its not hard to find sentences (if you want to call them that)

containing fifty words or more. 100 word or even 200 word sentences aren't rare. Except for a handful of savants with extraordinary memory, most of us can't remember the beginning of a fifty-word sentence before we get to the period at the end. Worse still:

A drafter takes huge risks with long sentences. They are much more difficult to interpret, and they materially increase the chance that a litigator will twist them to mean something the parties never intended.

Sprinkle those commas

Speaking of periods, they and other punctuation marks don't get a square deal in real estate documents. Some real estate lawyers believe a sentence can end with a semicolon. Few real estate lawyers understand that commas should be sprinkled like salt and pepper or that they belong in some places and not in others.

I wouldn't be surprised to find a commuting real estate lawyer having a hard time calling his or her spouse after concluding a long day of lease drafting. "Hello, dear. I have not completed the drafting of said lease by and between Mother's Cupboard and Paine Realty, hereinafter referred to as the 'Supermarket Lease', in accordance with our previous understanding. The next train

(hereinafter referred to as the "Next Train") is not scheduled to embark until 9:30 PM. The author may, but shall not be obligated to, return to our point or place of residence on the Next Train when said Supermarket Lease drafting is substantially completed." What a mouthful, and what a prelude to divorce.

It is any wonder that many clients prefer to draft real estate documents themselves? How much worse can they do? If they avoid copying anything a lawyer ever wrote, they have a reasonable chance of at least understanding the words they use.

The conspiracy theory

Is it any wonder that the public thinks that real estate lawyers devise language called legalese that's understood only by other real estate lawyers? They see it as a conspiracy to perpetuate a monopoly on document drafting, and that notion engenders hostility. As ethnic slurring jokes decline, lawyer jokes increase, and some of them are bad news for us. Statements that all lawyers should be killed don't amuse me.

We need to do something to change the atmosphere. Writing understandable documents might be a good way to start. Moreover, it'll be good for business. Do it.

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