HAVE YOU HUGGED YOUR LAWYER TODAY?

COUNSEL'S CORNER

Graydon Howell and Inez Howell owned 43 lake lots at Lake Colorado City, Texas, and leased the lots to various tenants. The lots were ultimately sold to Providence Land Services, LLC in 2008, subject to the leases.

Evidently, the Howells elected to prepare the leases without the aid of an attorney. The duration of the leases was described in this clause: "For the sum of $_____, the receipt of which is hereby acknowledged, a like annual rental of $_____ payable each year on or before _____, Lessor will lease to Lessee the following described lot or parcel of ground on [the] shores of Lake Colorado City, for residential purposes only, for the period from this date until *Indefinite* . . ." [emphasis added.]

The trial court determined that "*Indefinite*," in this context, meant 99 years from the date of lease execution. This was based, at least in part, upon the tenants' evidence at trial of their substantial work to clear the lake lots for occupancy and substantial, expensive improvements with the expectation that the tenants would be allowed to pay rent and remain at the property for a long time.

Providence appealed.

The Texas Court of Appeals decided that " 'Indefinite' is not synonymous with 'infinity,' 'perpetual,' or 'forever.' " Since the leases have no stated end date, the tenancy is terminable by either party at any time. That ruling doubtless pleased Providence, but the tenants – not so much.

See Providence Land Services LLC v. Jones, No. 11-09-00298-CV, Texas 11th Court of Appeals, October 6, 2011.

Switching gears . . . William Norris and Martha Norris signed three different contracts to sell Wood County property to Eleanor Davis, all dated November 5, 2003. One contract closed and funded, but then a dispute arose regarding an option to purchase the balance of the farm. Davis sued Norris for specific performance and damages. Norris won in trial, and Davis appealed.

The option contract at issue allowed Davis to purchase the remainder of the 545 acre farm. Exhibit A to the Contract stated: "SELLER WILL HAVE 9 MONTHS NOTICE BEFORE BUYER WILL CLOSE." Exhibit A also provided that Davis had the ". . . Option and First Right of Refusal until January 1, 2007 to purchase . . ." the option property.

Davis attempted to exercise the option on March 20, 2006, by sending a letter to Norris providing that the closing would be on December 20, 2006. This would seem to satisfy the Exhibit A requirements, except that the letter was not actually mailed until March 28, 2006.

The Texas Court of Appeals, however, decided that the notice clause was ambiguous. The notice provision did not state that the notice was a condition to the proper exercise of the option. The exact meaning of the January 1, 2007 date was also unclear to the Appellate Court.

The Texas Court of Appeals dispatched the case back to the trial court, to try, try again. See Davis v. Norris, No. 06-10-00093-CV, Texas 6th Court of Appeals, October 27, 2011.

Lessons learned:

1. Be sure the language you insert in a Contract or Lease is CRYSTAL clear.
2. Don't forget that TREC laws and rules prohibit TREC licensees from practicing law. Only the parties and their attorneys can draft these types of legal terms and provisions. TREC licensees may not.
3. Sometimes it makes sense to get a lawyer involved – to be sure the parties' intent is properly stated.

Stuart A. Lautin, Esq.*
Counsel to North Texas Commercial Association of REALTORS®, Inc.

* Board Certified,
Commercial (1989) and Residential (1988) Real Estate Law,
Texas Board of Legal Specialization

Higier Allen & Lautin, PC
5057 Keller Springs Road, Suite 600
Addison Texas 75001
P: 972.716.1888
E: slautin@higierallen.com
W: www.higierallen.com