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Drafting better leases

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By
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Property owners are losing time and money as a result of leases that could have been better drafted. Commercial property owners should be using leases that 1) maximize profits, 2) avoid lengthy court battles and 3) ameliorate the time and monetary losses suffered from a defaulting tenant. First, provisions should be added to a lease that provide for an enforceable self-help clause which permits an owner to evict a tenant by changing the locks

and taking back possession peacefully. This may save the loss of valuable time and money during the period in which a case is in court and no rent is being collected. In addition, such a self help provision allows for a tremendous amount of leverage over the tenant if the lease has been violated and the tenant cannot rely on the snail-paced legal process to delay an eviction.

Second, many leases omit essential provisions such as clauses terminating the lease for the frequent failure to pay rent when due, collecting a portion of the profits paid by a subtenant and/or cutting the length of time for a notice to cure or when a landlord can terminate a lease. Furthermore, landlords should also examine clauses relating to security

deposits, guaranties, letters of credit, insurance and constructive evictions.

Additionally, a lease should include a provision whereby if the landlord is required to conduct repairs, the cost is passed on to the tenant as additional rent. Of course, the commercial lease should be analyzed in its entirety to produce many more protections and income devices and to squeeze out the best possible results. It should be noted that the process is subject to negotiation and will depend of such factors as the strength of the market.

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