

Monthly Webinar Series Courtesy of Gassman, Crotty & Denicolo, P.A.

LOOK BEFORE YOU LEASE – Negotiating Leases and Related Relationships

Tuesday, April 25, 2017
12:30 p.m. to 1:00 p.m.

Presented by:

Alan S. Gassman, J.D., LL.M. &
Christopher J. Denicolo, J.D., LL.M.
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Upcoming Webinar Series Calendar for Business Law and Strategies For Business Owners and Professionals

- SERIES 3 5/23/17-Designing and Enforcing Non-Competition Covenants in Florida
- SERIES 4 6/20/17-Coordinating Business Conduct, Contractor Relationships and Insurances with Chuck Wasson
- SERIES 5 7/25/17-Creditor Protection Planning for the Professional Practice or Operating Business
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- SERIES 10 12/19/17-Income Tax Strategies and Compliance Aspects of Business Planning

*Free 30-Minute Webinars Courtesy of Gassman,Crotty & Denicolo, P.A.
For more information email: agassman@gassmanpa.com*

**Moderated by
Alan S. Gassman**



PLANNING WITH LLCs AND LIMITED PARTNERSHIPS-INTERESTING USES

Presented by:

Steven Gorin & Kenneth Crotty

May 3, 2017



Steven Gorin



Kenneth Crotty

A 2017 Estate Planning Webinar Series Presentation

IRA PLANNING OPPORTUNITIES AND PITFALLS

Presented by:

**Edwin Morrow
& Christopher Denicolo**

July 12, 2017

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Christopher Denicolo

BLOOMBERG BNA's 2017 ESTATE PLANNING WEBINAR SERIES

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NEGOTIATING LEASES

More than you thought.

- First, start with a checklist.
- There are a great many details that can become hand grenades in a Lease Agreement and arrangement.
- Learn from the previous mistakes and nightmares of others - do not create your own.
- Lease execution formalities.
- Landlord's legal right to lease the property.



LOCATION, LOCATION, LOCATION VS. LOWER OVERHEAD AND ADVERTISING OTHERWISE

- Beware of the business person who lives above his or her means.
- Remember the recession of 2007 through 2011 - those with more modest fixed expenses had a much higher survival rate, and experienced much less pain.
- What is your escape plan?
- Is it better just to buy a whole building or an office or a business condominium?
- Should you be getting a title search?
- Know your neighbors - what is going on around you.

Landlord covenants that Practice shall be the exclusive provider of _____ (insert type of services provided) services at the Shopping Center Site and shall prevent any other tenant from providing any type of _____ (insert type of services provided) at the Shopping Center Site.



START AT THE BEGINNING - THE TERM OF THE ARRANGEMENT

- A. Need plenty of time to build out and move in.
- B. Be able to extend start date for good cause.

If at the end of the Abatement Period due to a default by the Landlord, there is a delay in occupancy of the Premises by the Tenant, Tenant will not be obligated to pay the monthly installment of Base Rent until Tenant is occupying the Premises, provided that Tenant and Landlord will use reasonable efforts to avoid a delay in occupancy.

- C. A two-year lease with four two-year options to extend is much more valuable than a five-year lease with one five-year option.
 - If option to extend is exercised, will there be an allowance for refurbishing?
 - Will terms be identical upon exercise of option or the Landlord's then applicable Lease Agreement?
 - Will the rent be fixed, change with CPI, or be based on market at the time - or some hybrid combination like no less than CPI increased amount and no more than 110% of fair rental value?



NEGOTIATING THE RENT AND COMMON AREA AMOUNTS

- A. Simultaneously be negotiating with another Landlord for less expensive space and let the favored Landlord know that they may become alternative “B.”
- B. What the heck are CAM charges?
- C. Put ceiling on common are expenses and read the language carefully.

In order to assure the Tenant that its proportion of the Real Estate Taxes, Insurance Premiums, and the Common Area costs will be kept at a reasonable figure, Landlord agrees that the aggregate of the Tenant's proportion of the Real Estate Taxes, Insurance Premiums, and the Common Area costs shall be fixed at Four Dollars (\$4.00) per sq. ft. per month, (\$800.00 per month), for the Term of the Lease. Tenant shall pay Eight Hundred Dollars (\$800.00) per month, and any extension thereof, as Additional Rent for Real Estate Taxes, Insurance Premiums, and the Common Area costs, for the Term of the Lease ("The Fixed Real Estate Taxes, Insurance Premiums, and the Common Area Costs).

- D. Ask for right to reduce rent if other tenants pay less later.
- E. Are you sure you know how many square feet there are? - Understanding the BOMA standard.



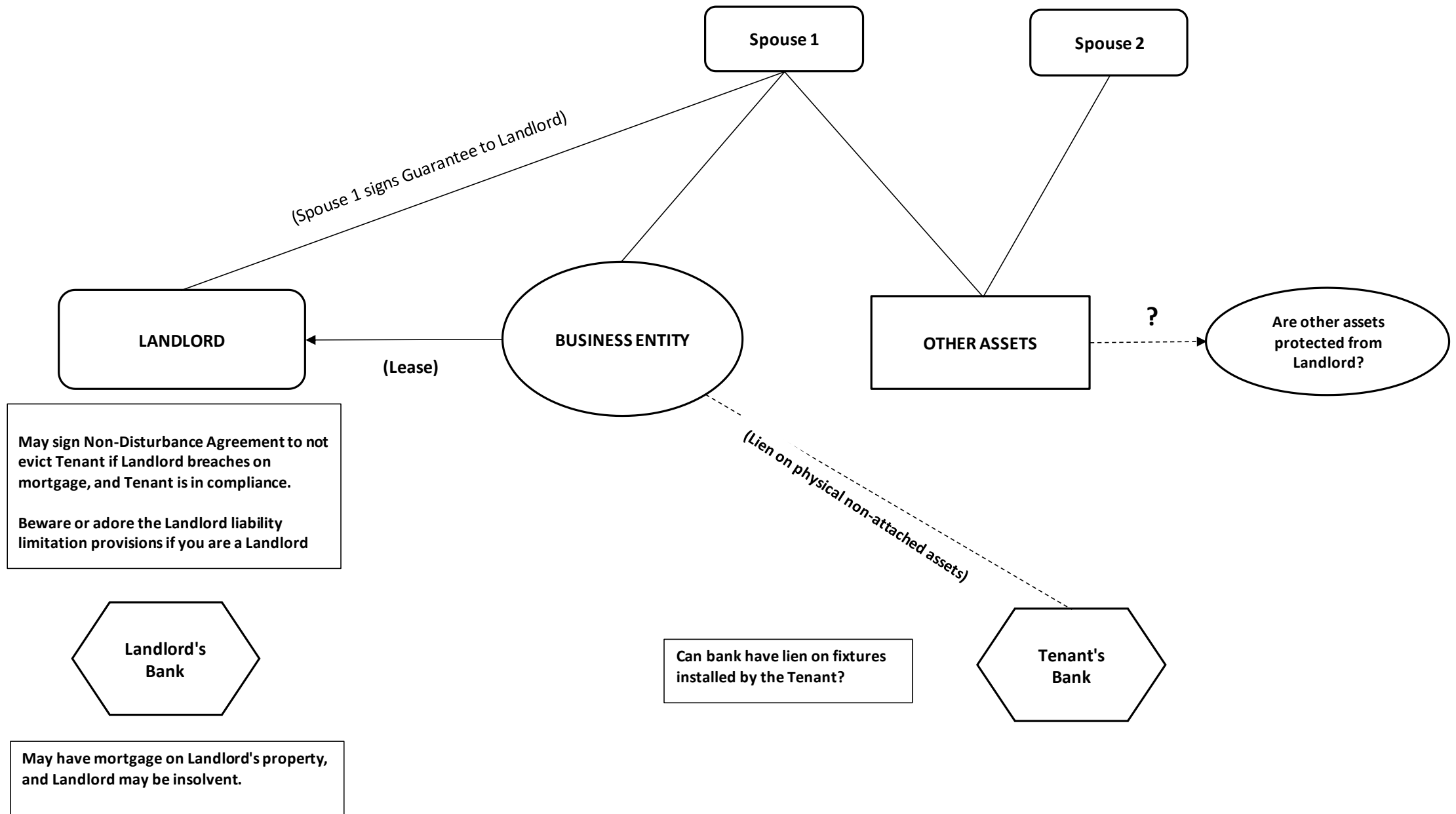
LIABILITY, LIABILITY, LIABILITY

- A. Much more than just the deposit, rent and common expenses.
- B. Can limit liability of tenant to a specific dollar amount such as no more than the lesser of \$50,000 or \$4,000 per month for each month left in the lease if there is an early termination by tenant.
- C. Guarantees can be onerous:
 - May limit to a specific dollar amount.
 - May limit to the payment of rent and common expenses for a specified duration.

In consideration of Landlord, executing and entering into a Lease or other obligation with Tenant, the undersigned Guarantor, irrevocably and unconditionally guarantees payment when due, whether by acceleration or otherwise, of the Lease, and all leases now or later entered into with Tenant and all the obligations and liabilities due and to become due to Landlord from Tenant under any lease, note, or other obligation of Tenant to Landlord, together with all interest on the same and all attorney fees, costs, and expenses of collection incurred by the Landlord in enforcing any such obligations and liabilities; provided however, that the Guarantor's liability hereunder shall be limited to an amount equal to and not exceeding three times the monthly rental amount then being paid at the time of a default.

- D. Do not forget catastrophic liability issues, such as if the tenant accidentally burns the building down and insurance does not pay - is the guarantor ready to buy the Landlord a new building?





- A. Memorandum of Lease.
- B. Subordination/Attornment Agreements.
- C. Non-Disturbance Agreements

This Lease and the Tenant's rights under this Lease will automatically be subordinate to any mortgage or mortgages, or encumbrance resulting from any other method of financing or refinancing, now or afterwards in force against the Lands or Building or any part of the Lands or Building, as now or later constituted, and to all advances made or afterwards made upon such security; and, upon the request of the Landlord, the Tenant will execute such documentation as may be required by the Landlord in order to confirm and evidence such subordination.

Tenant's rights shall be recorded in a Memorandum of Lease in the public records of the appropriate county. Any bank that holds a mortgage on the Lands or Buildings shall provide Tenant with a Non-Disturbance Agreement to confirm that Tenant will, in the event any proceedings are brought, whether in foreclosure or by way of the exercise of the power of sale or otherwise, under any other mortgage or other method of financing or refinancing made by the Landlord in respect of the Building, or any portion of the Building, remain as Tenant under the Lease. Landlord will execute such documentation as may be required by the Tenant in order to confirm and evidence the above.

- D. Zoning and Permits



ASK FOR RIGHTS OF FIRST REFUSAL

- A. Right of first negotiation/refusal to extend if no set option.
- B. Right of first refusal for available adjacent space.
- C. Right of first refusal to purchase building - or to create condominium and purchase unit.



MAKE SURE THAT THERE IS AMPLE PARKING

- A. Best to have reserved spaces with the right to put up signs.
- B. At minimum, there should be reasonable parking rights based upon an enforceable standard.
- C. What other amenities are needed - antennas on roof, medical waste pickup access, etc.

The Tenant shall be entitled to the exclusive use of the eight (8) parking spots designated in Exhibit F, however Tenant and Tenant's invitees may park in other spaces, if such spaces are not designated for the exclusive use of other Tenants.



SIGNAGE

- A. Approved as an Exhibit to the Lease.
- B. At least as much signage as other tenants or top billing.
- C. Who owns the sign or what happens upon termination?



CONDITION AND REPAIRS

Read carefully, consult with contractors, and negotiate to reduce risk and expense.

- A. “As Is” vs. Warranties of Condition.
- B. Limiting liability by provisions.

Notwithstanding the below, Tenant's Repair obligations shall not exceed \$5,000 for any calendar quarter, except to the extent occasioned by the negligence or inappropriate use of the Premises by the Tenant. Any amount above the \$5,000 shall be the sole responsibility of the Landlord.

Notwithstanding any language in this Lease to the contrary, up until May 31, 2018 Landlord shall responsible for all repairs for the HVAC and the 3-phase, 200 amp electrical service, involving anticipated or actual costs in excess of \$500.00 per incident not due to the Tenant's misuse, waste, or neglect or that of the Tenant's employee, family, agent, or visitor. Notwithstanding the foregoing, the Landlord shall not be responsible for all maintenance and seasonal maintenance of the HVAC throughout the entire Term of this Lease, which shall be the sole responsibility of the Tenant. After May 31, 2018 the Tenant shall be responsible for all repairs for the HVAC and the 3-phase, 200 amp electrical service regardless of cost and regardless of cause, provided that after May 31, 2018, Tenant's HVAC repair obligations shall not exceed \$1,200 for any calendar year, except to the extent occasioned by the negligence or inappropriate use of the Premises by the Tenant, provided that Tenant adequately maintains the HVAC through a reputable licensed HVAC contractor and keeps records of such maintenance. Any amount above the \$1,200 shall be the sole responsibility of the Landlord, and Landlord will have the right to select any contractor and approve any repairs over the \$1,200 limit.



CONDITIONS AND REPAIRS (contd.)

- C. Where language is vague, the tie goes to the Landlord on interpretation, so be extra careful.
- D. Even if the lease says that the Landlord is responsible for repairs, they may be added as a common area expense.
- E. If unit is a condominium, understand responsibilities under condominium documents, and possibly kick the tires on the Condominium Association's solvency and condition of entire building.
- F. Require the Landlord to keep the common areas and building in first class condition.

Landlord covenants that the Shopping Center Site will be maintained in its present condition during the term of the Lease, and that the Shopping Center Site will not be used for the Restricted Uses designated in Exhibit G.

- G. Expand quiet enjoyment rights to prevent competing or noxious uses.



EXHIBIT G

Restricted Uses

Landlord hereby covenants and agrees that it will not lease, rent, sell or otherwise permit to be owned, controlled, leased, used or occupied any portion of any property owned by Landlord for any of the uses set forth in items (a) through {x) below, and Tenant hereby covenants and agrees that it will not lease, rent, sell or otherwise permit to be owned, controlled, leased, used or occupied any portion of the Property for any of the uses set forth in items (a) through (v) below:

- a) a use or operation that is generally considered to be an environmental risk to any portion of the Center or surrounding properties;*
- b) a business selling alcoholic beverages for on-premises consumption; provided, however, a reputable national chain (i.e. a World of Beer) or any restaurant with sit-down table service as its primary operation shall be permitted so long as the sale of alcoholic beverages does not exceed 50% of its gross sales;*
- c) a laundry or dry cleaning establishment, provided, the foregoing restriction shall not include an establishment for dry cleaning drop-off and pick-up only, with no cleaning services being performed at the subject property;*
- d) any establishment which stocks, displays, sells, rents, or offers for sale or rent any merchandise or material commonly used or intended for the use with or in consumption of any narcotic, dangerous drug, or other controlled substance (provided that the foregoing is not intended and shall not be construed to prohibit a drug store);*
- e) adult book store, an establishment selling or exhibiting pornographic materials or any form of adult entertainment or an operation whose principal use is an exotic dancing and/or massage parlor (provided this restriction shall not prohibit massages in connection with a beauty salon, health club or athletic facility, or a national massage chain such as Massage Envy);*
- f) a pool or billiard hall, arcade, night club, dance club, movie theater or cinema, gyms or health clubs greater than 5,000 square feet, schools or learning centers having more than thirty students at any one time, skating rink or bowling alley. Notwithstanding the foregoing, one (1) gym or health club in excess of 5,000 square feet shall be permitted as long as it is not located on an adjacent parcel to the Premises;*



EXHIBIT G (contd.)

- g) *children's play or party center, telemarketing, poling and surveying center, or office use; however, the foregoing shall be permitted if there is sufficient parking to maintain a ratio of 6 spaces per 1,000 sw. ft. of gross leasable area;*
- h) *an abortion clinic; Planned Parenthood*
- i) *a pet store; except, however, a national pet store (i.e. a Petsmart or Petco) shall be permitted if the location of such use is located no less than 150 feet from the Premises;*
- j) *a gasoline station or an auto repair shop; provided, however, one gasoline station OR one auto repair shop will be allowed on Landlord's residual as long as it is a reputable national chain (i.e.: Take 5, Wawa), and is not located on an adjacent parcel to the Premises;*
- k) *a lot for the sale of used automobiles;*
- l) *a mobile home park, trailer court (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance), mobile home sales lot, living quarters, hotel or apartment building;*
- m) *off-track betting establishment, bingo parlor or any gambling use;*
- n) *a business which would emit or produce noxious fumes, gases, excessive dust, dirt or loud noises;*
- o) *an assembly, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;*
- p) *a junk yard, stock yard, animal raising operation, a dump or disposal or any operation for the incineration or reduction of garbage or refuse;*
- q) *a pawn shop, a thrift store, consignment shop or "re-sell" shop, a "Good Will" or "Salvation Army" type of store, flea market or a store dedicated to the sale of tobacco products;*



EXHIBIT G (contd.)

- r) a mortuary or funeral home;
- s) a church or other place of worship, banquet hall, auditorium or meeting hall;
- t) no flashing neon signs may be placed in the window or on any buildings greater than 24 inches x 24 inches or on any poles located in the Center;
- u) the outdoor display, sale or storage of seasonal merchandise (Christmas trees, pumpkins, produce, flowers, etc.) and/or the temporary or periodic (i.e., not permanent) outdoor display, sale or storage of merchandise (art work, novelties, clothing, etc.); and/or
- v) carnival, amusement park, or circus



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