

JANUARY
2009

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COMMERCIAL LEASE NEWSLETTERS

In lieu of the January 2009 Commercial Lease Newsletter, I am publishing the second portion of a seminar which was conducted at the embassy suites on December 11, 2009 and attended by approximately ninety-six (96) commercial property managers and commercial property owners. As indicated in the outline, this is an outline of a presentation of a seminar and is not legal advice for the recipients of this information.

COMMERCIAL TENANT WITHHOLDING OF RENT

Nancy K. Alexander v. A. B. Anks, Inc., 840 So. 2d 305 (5 DCA 2003)

3. **TENANT DEFAULT AND TERMINATION**

- A. **Default**
- B. **Requirements to Evict**
- C. **Holding Over**
- D. **Service of three-day notice**
- E. **Follow up to three-day notice - notice of termination to avoid bankruptcy stay**

4. LANDLORD OR PROPERTY MANAGEMENT RIGHTS AND DUTIES AND APPLICATION OF LEASE DEPOSIT

- A. Take the premises back for the Landlord's account terminating future rental obligations but retaining the right to collect past due monies.
- B. Take the premises back for the Tenant's account and collect general damages measured by the difference between the agreed rental and the rents that the Landlord can recover.
- C. An acceleration clause will allow Landlord to seek present value of future rents.
- D. Allow the premises to remain vacant and collect each months rent arrearage as it becomes due. Unless required by the lease, mitigation of damages is not required. (Mitigation of damages attempts to relet etc. and not required).

83.202 WAIVER OF RIGHT TO PROCEED WITH EVICTION CLAIM

Acceptance of Rent

DUTY TO MITIGATE DAMAGES

RESIDENTIAL GOOD FAITH EFFORT – Standard F.S. 83.595

E. PITFALLS FOR LANDLORD - Lockout – Constructive Eviction:

CONSTRUCTIVE EVICTION ELEMENTS

EVICTION PROCEDURE – CLAIM FOR POSSESSION

USE OF SUMMARY PROCEDURE –FS 83.21 (authorizes 51.011), 51.011 & 83.232 (“Pay to Play” Rule)

EXCEPTIONS RELATING TO GOOD CAUSE SHOWN – EXTENSION OF TIME OR DETERMINATION OF RENTALS / F.S. 83.232

ENFORCEMENT REMEDIES

ELECTION OF REMEDIES

ENFORCEMENT OF STATUTORY LANDLORD'S LIEN

**LIEN FOR DISTRESS FOR RENT – F.S. 83.08:
(Landlord's weapon to collect rents)**

- A. PRIORITY OF LANDLORD'S LIEN

- B. LANDLORD'S LIEN IS NOT SUPERIOR TO A LIEN OF A THIRD PARTY THAT WAS ACQUIRED BEFORE THE PROPERTY WAS BROUGHT ON THE PREMISES

- C. LIQUOR LICENSE NOT PART OF LANDLORD'S LIEN

ENFORCEMENT OF LANDLORD'S LIEN – DISTRESS FOR RENT

OBTAINMENT OF DISTRESS FOR RENT WRIT AND PROCEDURE

**NOTIFICATION TO FORMER TENANT OF PERSONAL PROPERTY
REMAINING ON PREMISES AFTER TENANCY HAS TERMINATED
715.104 (1)**

**F. COMMERCIAL LEASE EXPENSE PROVISIONS RELATING TO
COMMON AREA MAINTENANCE (CAM) BILLING AND CPI COST
INCREASES**

G. GROSS RECEIPTS CLAUSES

**H. BANKRUPTCY REFORM ACT PROVISIONS AS CONTAINED IN U.S.C.
SECTION 362**

FEDERAL FAIR HOUSING ACT

RESERVATION OF RIGHTS FOR PROSPECTIVE RENTALS

I. SALE OF BUSINESS / RELEASE OF TENANT RELEASES GUARANTOR

J. EMINENT DOMAIN DAMAGES – TENANT

Winn Dixie Stores, Inc. v. Department of Transportation, 839 So. 2d 727 (2 DCA
2003)