



Real Estate Client Alert

Recently Adopted Law Requires Landlords to Include a New Tenant Protection in Residential Leases

**A Publication of Saiber LLC's Real Estate Law Group
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On January 17, 2014 the New Jersey legislature adopted a new statute¹ that has the potential to impact residential landlord/tenant proceedings, and in most cases will require residential landlords to revise their standard form leases.

Residential leases typically include clauses providing that attorney's fees are considered "additional rent" or "collectible as rent" in the event the landlord is successful in a legal action involving the tenant. The newly enacted statute provides that when a residential lease includes a provision entitling the landlord to recover attorney's fees or expenses, or both from a tenant in an action or summary proceeding arising out of the lease, the lease must now also include the following reciprocal provision in bold typeface in a font no less than one point larger than the point size of the rest of the lease clause or 11 points, whichever is larger:

"IF THE TENANT IS SUCCESSFUL IN ANY ACTION OR SUMMARY PROCEEDING ARISING OUT OF THIS LEASE, THE TENANT SHALL RECOVER ATTORNEY'S FEES OR EXPENSES, OR BOTH FROM THE LANDLORD TO THE SAME EXTENT THE LANDLORD IS ENTITLED TO RECOVER ATTORNEY'S FEES OR EXPENSES, OR BOTH AS PROVIDED IN THIS LEASE".

¹ P.L. 2013, c. 206 appearing as *N.J.S.A. 2A:18-61.66* and *N.J.S.A. 2A:18-61.67*

All new residential leases entered into on or after February 1, 2014 must include this provision. As to leases already in place, the law allows the court to read the provision into the lease as an implied covenant. Any waiver in the lease of the provision is considered void against public policy.

Under the new statute, a tenant may hold the landlord responsible for the tenant's attorney's fees and expenses in cases where the tenant successfully defends against an action commenced by the landlord seeking dispossession, as well as actions brought by the tenant against the landlord arising out of a failure of the landlord to perform a covenant or agreement of the lease.

The implications of this new law could be significant. Landlords should review and revise their leases as necessary to comply with the law prior to entering into leases with any new tenants, as well as consider amending any existing leases upon renewal to include the new statutory language. In addition, when bringing a summary dispossession action against a tenant, landlords should make certain that the case has clear and unequivocal merit and confirm that they have complied with the numerous procedural and other technical requirements of the Anti-Eviction Act². Tenants will be entitled to payment of their attorney fees and expenses for cases that are dismissed (or voluntary withdrawn) due to a landlord's failure to comply with the technical requirements of the Act. Now that this new law is in effect, in addition to incurring the delay and the costs of filing a second action to correct a procedural defect, the landlord may be responsible for the tenant's attorney's fees and expenses incurred in connection with the initial failed attempt.

If you have any questions regarding the requirements of the new statute, or wish to discuss this publication further, please contact Randi Schillinger, Esq. at

² N.J.S.A. 2A:18-61.1, et. seq.

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About the Authors



Randi Schillinger's practice emphasizes both complex real estate and financial transactions and all aspects of transactional and regulatory environmental compliance issues. She has broad experience in construction, purchase money and leasehold financings and acquisitions, sales and leasing of all types of real property. She routinely represents lending institutions in connection with commercial, construction, acquisition and refinancing transactions, including those related to shopping centers, retail establishments, industrial complexes and apartment buildings. Randi provides counsel to the business community with respect to environmental due diligence, permitting and compliance matters. She also handles environmental matters relating to the sale, transfer, closure and financing of New Jersey businesses and advises clients on an ongoing basis on permitting and compliance obligations under Federal and State environmental laws.



Jason Rubin concentrates his practice in real estate and land use law, with a particular focus on the sale, acquisition, development, financing and leasing of commercial, office and industrial properties. In addition to representing real estate developers, investors and lenders in a broad range of transactions, Jason regularly appears before planning and zoning boards on various land development, site plan and variance applications. As a complement to his real estate and land use practice, Jason also counsels clients on issues relating to real estate taxation and has experience representing commercial property owners in real estate tax appeals before the county boards of taxation and courts of New Jersey, New York and Pennsylvania.

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