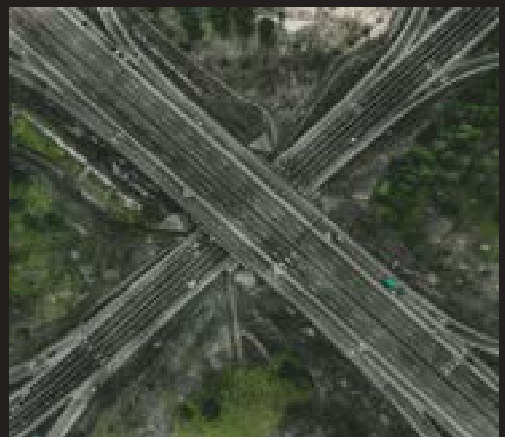


The Intersection Between Real Estate and Landlord Tenant Law

Real Property Trust and Estate Law Track (Central Meeting Room 4)

Topics we will cover are: 1. How to determine the status and rights of occupants in a property during and after a real estate transaction. 2. How to allow advise buyers if, when and how they would be able to take possession of the purchase for their own use. 3. How to tailor the real estate contract to account for the unique needs of an occupied unit. How to protect your clients from issues down the line by making sure the transfer of the tenancy is properly executed. 4. How to apply the laws surrounding tenants and squatters to achieve optimal results for your clients, whether they are buyers or sellers.

Navigating the intersection between Landlord-Tenant & Real Estate Law



Your Presenters

Moderator:
Lawrence M. Centanni, Esq.



Speakers:
Eileen A. Conaty, Esq.
Jacob P. Davidson, Esq.

The logo for Falk Flotteron & Davidson. It consists of the firm's name in a bold, serif font, with "Falk Flotteron" on the top line and "& Davidson" on the bottom line. The entire logo is enclosed in a black rectangular border.

**Falk Flotteron
& Davidson**

Agenda



- 01 The property is under contract and is occupied by a third party, what's next?
 - a) The big dilemma: Tenant vs. Squatter

- 02 So, the buyer's moving in?
 - a) Anti-eviction Act Limitations
 - b) Waiting Periods
 - c) Notice Requirements
 - d) Trial

- 03 Must haves in a real estate contract when tenants are involved!

- 04 How to protect buyers and sellers from future Landlord-Tenant issues.
 - a) Essential documents required at closing.

- 05 How to navigate occupied property transactions in practice.
 - a) Recent case and fact patterns.

**TENANT
V.
SQUATTERS**

Who is a SQUATTER?



- Anyone occupying a property without colorable claim to title or possession.
 - Examples:
 - Purchaser buys a bank owned home or through a foreclosure and the previous owner or their friends/ family are still inside.
 - A friend, boyfriend, or family member of the seller does not leave after closing.
- Anyone who had a written or verbal agreement with any previous owner to reside in the property in exchange for something of value such as property maintenance, child care services, or rental payments is likely not a squatter.

How are Squatters removed?

**They are
Ejected.**

What is an Ejectment Proceeding?

2A:35-1. Jurisdiction in real property possessory actions

Any person claiming the right of possession of real property in the possession of another, or claiming title to such real property, shall be entitled to have his rights determined in an action in the Superior Court.

It is a 3 step process and maybe more:

- Complaint
- Hearing
- Order/Writ.

DEFENSES TO AN EJECTMENT



- Colorable claim of possession
 - Landlord tenant relationship
 - Life Estate in the property.
 - Right of first refusal.
 - Option to purchase.
- Colorable claim of title
 - Pending litigation as to ownership.
 - Rent to own agreement.
 - Named in the will to inherit the property.

Tenant Occupied Properties.

Tenancy runs with the Land

- Once a tenant = always a tenant.
- The Anti- Eviction Act Protections
 - But the Lease is expired?
 - But the tenant never had a written lease?
 - But I want to renovate?
 - But the rent is to low?
 - But I don't like them?
- Grounds for Eviction
 - Limited in NJ



**So the
buyer wants to,
or needs to,
move in?**

**Need to terminate
a tenancy?**

**It's harder than
you may think.**

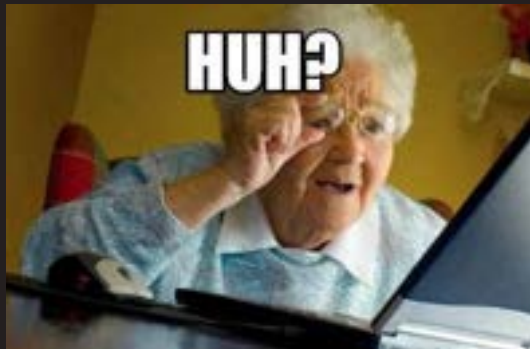


What does NJSA 2A:18-61.1(3) say? (legalese...ugh)

The owner of a building of three residential units or less seeks to occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.



This is what it means in plain English.



- Only applies to a building that is 3 units or less.
 - single family home.
 - condominium
 - townhouse
 - two or three unit property.
- Prospective owner wants to move in.
- Express language needed in the real estate contract

What it does not include:



- Residential 4 units or more.
- Buyer does not want to truly move in.
- Business entities wanting to moving in.
- Commercial Units.
- Family members of the buyer that want to move in.
- Tenants whose written lease is still in term.

What happens if the buyer/owner does not move in under the notice?



See NJSA 2A:18-61.6

a. Where a tenant vacates the premises after being given a notice alleging the owner seeks to personally occupy the premises under subsection l. of section 2 of P.L. 1974, c. 49 (C. 2A:18-61.1) and the owner thereafter arbitrarily fails to personally occupy the premises for a total of at least six months, or arbitrarily fails to execute the contract for sale, but instead permits personal occupancy of the premises by another tenant or instead permits registration of conversion of the premises by the Department of Community Affairs pursuant to "The Planned Real Estate Development Full Disclosure Act," P.L. 1977, c. 419 (C. 45:22A-21 et seq.), such owner shall be liable to the former tenant in a civil action for three times the damages plus the tenant's attorney fees and costs.

Step 2: The Complaint & The Trial



- Notice to quit needs to be attached to the complaint
- Mailings as well.
- Bring the seller and buyer to court.
- Have the contract ready as well.
- Buyer needs to explain that he wants to move in.

FILING FOR NONPAYMENT OR ANY OTHER PROVISION



Not the greatest idea to do.

- Filing a landlord tenant nonpayment case becomes a little bit trickier during a real estate transaction.
- If you come to an agreement, make sure to include express language regarding the new buyer/owner's right to be substituted in as Plaintiff.
- If a Judgment of Possession by default or after trial is entered, you will have to file a motion to amend the parties. This is difficult.

**Tenants + Real
Estate =
Due Diligence**

FROM THE REAL ESTATE PERSPECTIVE



Must haves when tenants are involved

- Contractual language needs to expressly state the buyer wants to move in.
- Problems that occur and how to fix it.
 - Tenants will not leave
 - Cash for keys agreement
 - Reduction in purchase price / concession
 - Escrow agreement
 - Closing date vs Court date

The building itself.



1. Number of units in the building
2. Certificate of occupancy.
3. Zoning Verification.
4. DCA Registration issues.
5. Rent leveling board registration.

Reviewing the Lease Agreement



- Is it verbal or written?
- If written leases, obtain a copy and any addendum(s).
- Verify the rental amount.
- Verify the security deposit.
- Find out if the tenant is current with the rent.
- Government assistance programs.
- Ensure there is no "right of first refusal to purchase."
- As well as an option to purchase.

Preventing the creation of a Tenancy

The power of a Use and Occupancy Agreement.

USE AND OCCUPANCY AGREEMENT

This agreement is made this _____ day of December 2012
between _____ and _____, hereinafter referred to as
"PARTIES".

WHEREAS, the CONTRACTOR, hereinafter to be "CONTRACTOR",
WILLIAM, DUNN and COMPANY, is a firm, organized into a contract
for a sale of property located under at 1000 4th Ave., in the
County of Broward, the State of Florida ("PROPERTY");
AND WHEREAS, in consideration of the actual services rendered
hereby, and in consideration of the sum of money to be
paid;

1. The CONTRACTOR shall be entitled to use and occupy the
first floor of the property ("PROPERTY") as of January 15, 2013.
January 15, 2013. The expiration of the agreement shall
be January 15, 2013.
2. During the occupancy period, the CONTRACTOR shall be
responsible for all utilities at the premises.
3. During the occupancy period, the CONTRACTOR shall be
responsible for all damages to premises and shall be
liable for all damages to premises, or of things contained on
the premises of the premises. The CONTRACTOR shall
indemnify and hold the PROPERTY and the parties harmless
from any liability for the same. Also, the CONTRACTOR shall
be in effect as of the date of occupancy as indicated
herein which shall include but not be limited to, fire, theft
and coverage for the CONTRACTOR's general operations. The
CONTRACTOR shall also be liable for an additional amount.
4. CONTRACTOR agrees to pay to the PROPERTY the amount of
\$1,134.00, representing the total amount of the use
and occupancy fee. This amount is due to the
PROPERTY starting on January 15, 2013. In the event,
PROPERTY received the proceeds amount of \$1,134.00,
2013, the net due amount is \$1,134.00 and it shall be applied
against the \$1,134.00.
5. Should any other be concluded by the PROPERTY to amend
provisions, terms, or amounts, existing from this

agreement. The CONTRACTOR agrees to pay all amounts
owed by the CONTRACTOR, including reasonable attorney
fees.

6. This agreement is a use and occupancy agreement and shall
not be construed as, nor shall it create a
landlord/tenant relationship.

IN WITNESS WHEREOF, these the PROPERTY and CONTRACTOR have
hereby signed this Use and Occupancy Agreement, and received a copy of same.
Witness, signed the PROPERTY and CONTRACTOR shall
indemnify the PROPERTY's interest and all other questions that
may arise. This Agreement has been executed on the _____ day
of December 2012.

Witness

Witness

ESSENTIAL CLOSING DOCS

REAL ESTATE CLOSING DOCUMENTS

- Letters of attornment.
- Assignment of lease and security deposit.
- Estoppel certifications.



Letter of Attornment



Letter of Attornment
Dated April 1, 2022

TO: 12345 STREET UNIT ONE
St. Mary's Place
St. Mary's Place
12345 Street, St. Mary's
St. Mary's, WI 53001

Re: 12345 Street Unit One, St. Mary's WI
12345 Street, St. Mary's, WI 53001

Dear Sir/Madam:

We are pleased to inform you that the above named premises are now being occupied by your tenant, 12345 Street, St. Mary's, WI 53001.

They are to occupy the premises for the term of years, from the date hereinafter expressed, and to pay the rent thereon as hereinafter expressed.

12345 Street, St. Mary's, WI 53001, and the premises thereon, are being occupied by your tenant, 12345 Street, St. Mary's, WI 53001, and the premises thereon, are being occupied by your tenant, 12345 Street, St. Mary's, WI 53001, and the premises thereon, are being occupied by your tenant, 12345 Street, St. Mary's, WI 53001.

Very truly yours,
12345 Street, St. Mary's, WI 53001
12345 Street, St. Mary's, WI 53001

Assignment of Lease and Security Deposit

Assignment of Lease/Deposit

This Assignment is made on April __, 2011

WITNESSETH the Assignor(s) Sandy Landless whose address is 1275 West 26th Street, St. Louis, Missouri, referred to as the Assignor, did and in consideration of the sum of \$0.00 (One Dollar) and other good and lawful consideration, the receipt whereof is hereby acknowledged, have agreed to lease the Leased, Assignor's whose address is 1275 West 26th Street, St. Louis a month to month agreement entered into and substituted to Honey Barnes.

The said Assignor consents the month to month agreement is in full force and effect.

In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the various instruments may require.

IN WITNESS WHEREOF, the Assignor has signed and sealed this Assignment, and in cooperation, has caused this Assignment to be signed by the proper corporate officers and the corporate seal to be affixed, this 1st day of April 2011.

Witnessed and Attested by:

Sandy Landless (Print)

Landless hereby consents to the written assignment of the month to month agreement from Sandy Landless to lease the Leased, and she understands that all of the original terms of the agreement entered by Honey Barnes and any amendments thereto, shall remain in full force and effect.

Sandy Landless



Estoppel Certificate

TENANT ESTOPPEL CERTIFICATE

This certificate is made in connection with a lease by **SHOBY SALES**, the "Landlord" in this Agreement, the "Certificate", which is executed by the Landlord's Title in London and is subject to a Mortgage held by Lender on certain premises situated at 123-45 Maple Avenue, in the Township of London, County of York and City of New York, the "Premises" together with a certain lot or lots being known as the "Tenants".

1. The undersigned, **THOMAS SHIP CO.**, in record of agreement, hereby certifies that under a lease agreement dated on _____, 2019, the "Lease" was entered into on July 1, 2019. The copy of the Lease attached hereto is Exhibit "A" in its true and correct copy and contents of the Lease. The Lease is currently in full force and effect and there have been no amendments, modifications or assignments, if any, attached to Exhibit "A", and it represents the entire agreement between Landlord and Tenant.

2. In addition to the stated specific rental payments of \$1,000.00 within the term of 12 months, Tenant has paid to Landlord the following non-payment for rent of the Lease:

- (a) \$1,200.00 dollar of security deposit;
- (b) _____ dollar of prepaid rent;
- (c) _____ dollar of other lease adjustments;
- (d) _____ other amount.

3. Tenant is of full age, has no other or other under the Lease, or otherwise agrees that no other charges shall be levied for the same.

4. All rents and other charges that are payable under the Lease by Tenant have been paid up to the date hereof. This certificate shall be valid and in full force and effect from the date of its execution.

5. Neither Tenant nor, to the best knowledge of Tenant, Landlord is aware of any claim or performance of any obligation under the Lease and Tenant hereby certifies that the payment of rent or the payment of any other charges or other obligations under the Lease have been paid and Tenant has accepted the lease premises and is in full occupancy thereof, paying rent and actively conducting its business thereon.

6. Tenant has not assigned or sublet to the Landlord, and Tenant has not received notice of any assignment of the lease interest under the Lease.

7. Tenant has no easement rights, purchase options or rights of first refusal with respect to the premises or any other rights or interests in the above-referenced property.

8. If Landlord or its designee accepts in Landlord's opinion in the best interest of it a sale by power of sale or foreclosure, Tenant shall release Landlord in its design as a purchaser without any liability to it.

9. Tenant has no right or claim as the Lease to terminate the Lease prior to the expiration of the term of the Lease except, to the extent permitted by the Lease, in connection with a casualty or condemnation.

10. Tenant will not make or authorize the Lease to make or permit any act or omission which would be an additional act or omission of the Lease, and if Landlord, and if Tenant shall take any action within the Lease, or "Unauthorized Action", of which act or omission Landlord is the designee, or which action is not to be permitted by such party to Tenant from time to time or during, after or the completion of any, affected Landlord under the Lease has agreed. Tenant shall deliver a Transmittal Notice to Landlord at the same time a notice of Landlord's default is required to be given to Landlord under the Lease. This notice shall be in writing by Landlord. Tenant shall deliver a Transmittal Notice to Landlord at the following address:

SHOBY SALES
 217 1st Ave. Building
 123 Maple, New York 10002

11. The undersigned makes these representations and warranties for its benefit and protection of the Landlord, as Mortgagee of the Premises, with the understanding that the Landlord and its successors and assigns shall be permitted to rely on such representations and warranties.

12. It is acknowledged that the Mortgage, recorded of to be recorded as to the Premises identified in the Lease, executed by the Landlord & Tenant at SHOBY SALES, is it may be recorded here after or later, in register and given to use on the Lease.

Signed _____

WITNESSES: **THOMAS SHIP CO.**

By _____
 Title: **THOMAS SHIP CO.**

EXHIBIT "A"
LEASE AGREEMENT

Real World Examples



KEY TAKEAWAYS



- 01 How to determine the status and rights of occupants in a property during and after a real estate transaction.

- 02 How to allow advise buyers if, when and how they would be able to take possession of the purchase for their own use.

- 03 How to tailor the real estate contract to account for the unique needs of an occupied unit.

- 04 How to protect your clients from issues down the line by making sure the transfer of the tenancy properly executed.

- 05 How to apply the laws surrounding tenants and squatters to achieve optimal results for your clients, whether they are buyers or sellers.

Thank you!

Lawrence M. Centanni

Lawrence M. Centanni is an experienced litigator with over ten years of experience in commercial and residential closings, commercial litigation disputes, commercial collection matters, landlord-tenant issues, and municipal court violations.

Mr. Centanni thrives on cultivating strong relationships with his clients, passionately advocating on your behalf. Clients of Mr. Centanni described him as “professional, attentive and patient.” Mr. Centanni has been continually recognized as a Super Lawyer in the State of New Jersey from 2013-2019.

As an active member of the community, Mr. Centanni is a proud member of the New Jersey State Bar Association, Union County Bar Association, Richard J. Hughes Inn of Court, and a former member of the District XII Ethics Committee, having served a two terms.

Mr. Centanni is licensed to practice law in the State of New Jersey and at the District Court for the Federal District of New Jersey. He received his Bachelor of Arts degree in History, Government and Law from Lafayette College and his Juris Doctorate from the Thomas M. Cooley Law School..





Eileen A. Conaty

Eileen A. Conaty is a skilled and passionate litigator at The Law Office of Lawrence M. Centanni, with a focus on landlord-tenant issues, residential and commercial lease drafting and negotiation, and municipal court violations.

Eileen brings a fresh perspective to the practice of law, taking a client-centered approach for the NJ landlords she represents. Whether she is negotiating a lease agreement, advocating for landlords seeking just compensation for damages or reparations owed, or advising a client on the terms of a potential settlement, she always ensures the best interest of her client is at the forefront of her advice and decisions.

Ms. Conaty was certain, even from a young age, that the practice of law was her calling. Over the years, she has received many awards for her exceptional public service and dedication to law reform across sectors, including the New Jersey State Governor's Jefferson Award, New Jersey Child Abuse Prevention Award, and the National Liberty Museum Young Hero's Award. She further developed her advocacy expertise during her time in law school in the Child Advocacy Clinic, where she represented children in cases of parental abuse, neglect, and abandonment.

Eileen is licensed to practice law in the State of New Jersey. She holds a Bachelor of Arts degree in Political Science from Fordham University and earned her Juris Doctorate from Saint John's University School of Law.



Jacob P. Davidson, Esq. is a native son of New Jersey, born in Newark, raised in Bloomfield and then by way of Metuchen, NJ graduating from Metuchen High School in 2004, after which he attended the University of Hartford in Bloomfield, CT, where he was a member and is an alumnus of Theta Chi Fraternity, obtaining a Bachelor of the Arts in Communications with an emphasis in Journalism and a minor in History, graduating in 2008. He is the Managing Partner of his Firm, Falk Flotteron & Davidson LLP where he started his career as a Law Clerk in 2014, and where he now oversees a diverse practice handling complex commercial and civil litigation matters, and all aspects of real estate and transactional work. He is known as a well-respected attorney with vast knowledge in the realms of real estate and business.

Mr. Davidson has been nominated as a Super Lawyer for many consecutive years, among other attorney recognition, and was the New Jersey State Bar Association's Professional Achievement Award Recipient in 2022-2023 for his defense of a group of NJ Consumers in the Union County Chancery Court, against a major national Company and is the 2025 New Jersey State Bar Association's Young Lawyer of the Year. Mr. Davidson is a Trustee of the Middlesex County Bar Association, the Middlesex County Representative for the New Jersey State Bar Association Young Lawyers Division, Secretary and Chair Elect for the NJSBA Municipal Court Section, President Elect for the New Brunswick Bar Association, and Co-Chair of the Jewish Bar Association of New Jersey's Advocacy Committee. He is a frequent presenter and collaborator at various Legal Conferences throughout the State of New Jersey, including NJAJ, and the NJSBA Annual Meeting. Mr. Davidson is a member of the Middlesex County District Fee Arbitration Committee, as Chair of his Panel. He is also active in many philanthropic efforts mainly with the New Jersey State Bar Association including programs supporting groups like MEND, Will for Hero's and others.

At heart Mr. Davidson is a fierce advocate for his clients, family and community.