

TOPIC: LONG-TERM LEASES (MANAGED)
FROM: SCOTT B. UMSTEAD, P.A.

Things to Know:

- The Management Agreement will continue to control after closing. If the buyer wishes to have another company manage the property, the buyer will need to know whether the existing Management Agreement can be terminated. Some Management Agreements can be terminated upon written notice, but others cannot be terminated so long as the current tenant remains in the property. If the buyer refuses to purchase the property under current management, expect that the management company will have to be “bought out.” For example, unless otherwise provided in the Management Agreement, you may find the management company will insist on being paid what it would have earned through the current lease term. This may require negotiation and, at the very least, will require close coordination to make sure the seller isn’t left without management if the buyer fails to close and, if the buyer does close, buyer is able to seamlessly transfer management to another company.

The Listing Agent Should:

1. Have a complete, signed and readable copy of the Management Agreement;
2. Have a complete, signed and readable copy of the current lease;
3. Know whether the tenant is current on rent and/or eviction has been commenced; and
4. If the lease is in the name of the seller (as landlord), provide a copy to the seller’s attorney when you provide the contract.

The Buyer’s Agent Should:

1. Be sure to provide a copy of the Management Agreement to your client;
2. Be sure to provide a complete, signed and readable copy of the current lease to your client;
3. Find out whether the tenant is current on rent and/or make it a contract contingency;
4. Inform your client that the management company will prorate rent for the period of closing (the closing attorney will not prorate rent because the seller does not have the rent);
5. If the buyer refuses to purchase with the current management company in place, prepare an addendum stating the seller must, at seller’s expense, arrange for a termination of the current Management Agreement as of the date of closing and must, as well, pay to have the lease assigned and Security Deposit transferred;
6. Prepare an addendum stating the management company will prorate rent and will continue to retain the Security Deposit;
7. Prepare an addendum containing an inventory of which furnishings convey; and

8. If the lease is in the name of the seller (as landlord), provide a copy to the closing attorney when you provide the contract.

The Closing Attorney Should:

1. If the lease is in the name of the seller (as landlord), the attorney should have it assigned at closing even if the existing management company will continue to manage;
2. If the lease is in the name of the management company (as landlord), an assignment is unnecessary unless the management company is being terminated, in which case the lease should be assigned to the buyer (or the new management company); and
3. If the Management Agreement is being bought out at closing, the attorney may show the disbursement on the Settlement Statement. If either party wishes to have the termination memorialized in writing and wishes to have the attorney prepare it, the attorney will have to be told and the requesting party should expect additional fees.

Extra Things:

- After closing, the buyer should notify the Management Company that the buyer is the new owner. This is best done in writing and should: a) include a demonstration of ownership; and b) provide the buyer's contact information (in order to ensure the net rents come to the buyer).