

SCOTT B. UMSTEAD, P.A.

ATTORNEY AT LAW

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

Things to Know:

1. The buyer steps into the seller's shoes as landlord. This means the buyer will be: a) subject to a claim by the tenant that the seller has breached (i.e. failed to repair, etc.); and b) is responsible for the Security Deposit at the end of the lease term.**

**IMPORTANT: SC Code §27-40-450 provides, where a seller transfers the Security Deposit to the buyer and notifies the tenant in writing within a reasonable time after closing, the seller has no further responsibility for the Security Deposit. Stated inversely, if the seller does not transfer the Security Deposit and/or does not notify the tenant in writing, the seller will remain responsible for the Security Deposit. If the Security Deposit is not accounted for and/or refunded to the tenant when the lease ends and the tenant is not sure who holds the Security Deposit, the tenant will probably sue both the buyer and the seller. If a Security Deposit exists, it should be transferred to the buyer at closing. If the seller insists there is no Security Deposit or that it has been exhausted, the best practice is to memorialize this in a signed writing.

2. Even if a written lease has "expired," all lease terms still apply. Upon lease "expiration," the only change is that the tenancy converts to a month-to-month tenancy and is terminable by either party with 30-days' notice.
3. If the seller says "there is no lease," this generally means there is a lease, but the lease term expired. As stated in #2 above, the "expired" lease still governs the relationship.

The Listing Agent Should:

1. If the property is being sold rented:
 - A. Have a complete, signed and readable copy of the lease and any amendments/extensions;
 - B. Know whether the tenant is current on rent and/or eviction has been commenced;
 - C. Be prepared for the possibility the tenant will be required to sign an acknowledgement that the landlord has not breached;
 - D. If the lease has "expired," the seller might have discarded it without realizing it still governs the relationship. The buyer will probably (and should) require a new lease be signed prior to closing. Among other things, this new lease should memorialize the Security Deposit;
 - E. Be ready to furnish all tenant contact information to the buyer's agent;
 - F. Furnish a copy of the lease to the seller's attorney and inform the seller's attorney as to whether rent for the month of closing has been paid; and
 - G. Recommend to the seller that the seller send written notice to the tenant after closing notifying that the lease and the Security Deposit have been assigned/transferred.

2. If the tenant is supposed to vacate prior to closing, be aware the closing might not occur at all if the tenant breaks this promise. If the tenant will not go willingly, the seller will have to evict.

The Buyer's Agent Should:

1. If the property is being purchased rented:
 - A. Find out whether the tenant is current on rent and/or make it a contract contingency;
 - B. Prepare a contract addendum addressing all lease requirements. A few possible requirements are: a) produce the lease within 3 days of contract ratification; b) lease (and security deposit) assigned at closing; c) rent for the month of closing be prorated at closing; d) require production of tenant's contact information;
 - C. In that there may be a charge to prepare the lease assignment and it is logically done by the seller's attorney. It is smart to specify in the contract that the seller will pay the charge;
 - D. If the property is sold furnished, be sure the addendum contains an inventory of which furnishings convey (as opposed to those belonging to the tenant);
 - E. For the reasons stated above, be extremely wary of a situation in which the seller claims the lease has "expired." If the seller has no written lease with the tenant, it would be smart to require a contingency that a new lease be signed prior to closing and that your client be able to review it, etc.; and
 - F. Furnish a copy of the lease to the buyer's attorney.
2. If the tenant is supposed to vacate prior to closing, prepare an addendum making it a contract contingency that the tenant will be out before the closing. It is unwise to allow for the tenant to vacate on the actual date of closing because, if the tenant "needs another day or two," damages the property or removes appliances/furnishings, the closing is jeopardized.

The Closing Attorney Should:

1. Ensure the lease is assigned to the buyer;
2. Prorate rent for the month of closing; and
3. Transfer the Security Deposit to the buyer (this is done as a credit from the seller to the buyer on the Settlement Statement).

Extra Things:

1. A buyer may wish to require the tenant "attorn" to the buyer. This is typically done through an Estoppel and Attornment Agreement and simply means the tenant acknowledges the lease remains in effect, the landlord has not breached and tenant agrees to be bound to the buyer as the new landlord. This is a non-standard document in residential closings, so if your buyer requires it, be sure to include it in the addendum and make sure the addendum also states who will prepare it (i.e. which attorney) and which party will pay for it.
2. Following closing, the buyer should notify the tenant in writing that the lease has been assigned. The letter should include a copy of the Lease Assignment and should clearly state where the next rent check is to be mailed.