The Most Common Causes of Construction Litigation

Construction litigation can be quite complex due to the high number of parties and numerous moving parts involved. This creates several opportunities for issues to arise that can quickly skew the project's deadline or halt the production altogether.

Post Excerpt Disputes can arise at any stage of the construction process, from commitments at a project's start to fundamental disputes over performance after its completion. Contracts outline what is promised between two parties during a project. If the end result is not as stated in the contract (or something on the project goes awry), the affected party may make a legal claim for breach of contract.

Vertical Position 100%

In the Zone with Clementa Amazan – Episode 2

What is the Green Roof Bonus?

In our premiere episode of In the Zone with Clementa Amazan, we discussed the mixed-income housing bonus in the city of Philadelphia. In the latest episode, we discuss the city's green roof bonus, which provides developers the opportunity to increase density in their development projects. This bonus can be applied to properties in R□M-1, CMX-1, CMX-2, and CMX-2.5 zoning districts. Eligibility for the bonus is predicated on

the dwelling units being located in a building with a green roof, which must cover at least 60% of the rooftop. For new buildings, the building construction requires a minimum of 5,000 square feet of earth disturbance, as determined by the water department. Alternatively, for existing buildings, or expansions of existing buildings, the building requires a minimum footprint of 5,000 square feet.

After assuring that their property falls under these regulations, the applicant must also execute a recorded deed in favor of the city, which requires the green roof to be constructed and maintained, at a minimum, in accordance with the manufacturer's guidelines, where applicable, and with the water department standards. The green roof must be safely accessible and made available for inspection with reasonable notice given by the city.

A Recent Example

Recently, we worked on a CMX-2 project in which we were able to combine both the green roof bonus and the mixed-income housing bonus. Under the zoning for this particular project, 43 units and 1 commercial unit were permitted as of right. If the green roof bonus was applied, 10 additional residential units would be allowed on the property, bringing the total number of residential units to approximately 53, with 1 commercial unit. Next, we applied the mixed-income housing bonus. As we discussed in the last episode of In the Zone, the mixed-income housing bonus has two levels of affordability; moderate-income and low income. Developers also retain the option of either providing affordable units or making a payment into the city's trust fund.

For this particular project, if our client determined that they wanted to provide moderate-income housing, they would have to provide at least 6 residential units. And again, alternatively, they have the option of paying into the city's trust. For this project, the payment would have to be around

$423,000. The green roof bonus would allow them to have 10 additional residential units at the moderate-income level. And if low-income units were provided, an additional 7 low-income units. In total, our client would be permitted 21 additional residential units. The payment into the city's trust fund in this scenario would be $630,000. Utilizing the low-income bonus would allow for the development of 64 residential units and 1 commercial unit on the property.

Another option for our client is to stack the bonuses. If they were to decide that they wanted to go for the green reef bonus in addition to the moderate-income bonus (which would require seven residential units to be provided or the payment of $423,000) they would be able to get approval for 13 additional residential units, in addition to the 1 commercial unit that was allowed as of right. This would add up to about 66 residential units and 1 commercial unit on the property. Alternatively, if our client decided to stack the green roof bonus with the low-income housing bonus, they would have the option of either providing 8 residential units at the low-income level or making a payment to the city of about $780,000. In this case, they would be able to have 26 additional residential units on the property, with a grand total of 79 residential units and 1 commercial unit on the property.

At Nochumson P.C., we are more than legal counsel. We are people serving our neighbors and community in Pennsylvania and New Jersey. Knowing that real communication between real people can help lead to real positive results, our team of attorneys are available 24/7 to help answer your legal questions and to fight for you with skill and fortitude, whatever the case may be. When you hire us, you can expect a sensible and cost-effective approach to legal counsel. We think fast, think ahead, and get things done.

Post Excerpt ‘In the Zone with Clementa Amazan’ is a video series that discusses the bonuses provided by the city that allow for additional height, floor area, and density, a terrific option for developers trying to avoid the variance process. In episode 2, we will be covering the green roof bonus.

Vertical Position 30%

Landlord’s Termination of Lease Overrides Tenant’s First Right of Refusal Claim

One of the most prevalent of such contractual rights is known as a first right of refusal. Under such circumstances, the landlord may list and market the property for sale and, if the landlord obtains a bona fide offer from a third party, the tenant has the right to enter into a written agreement to purchase the leased premises under the same terms and conditions as the offer from the landlord.

In *Tri-State Auto Auction v. Gleba,* 2021 Pa. Super. LEXIS 340 (May 26, 2021), the Pennsylvania Superior Court recently found that a tenant’s right of first refusal to purchase the leased premises contained in a written lease did not survive a landlord’s termination of the lease arrangement.

In *Tri-State*, the landlord owned a commercial property in Upper Merion Township, Pennsylvania, the opinion said.

According to the opinion, in late 2010, the landlord and the entered into a written lease regarding the leased premises.

The written lease contained a provision providing the tenant with a right of first refusal as to any bona fide offer the landlord received from a third party to purchase the property during the lease term, the opinion said.

Also included in the written lease was a provision allowing the landlord to terminate the lease arrangement at any time upon 90 days prior to written notice of termination to the tenant and the payment of $100,000 to the tenant.

In 2014, the landlord received an offer from a third party to purchase the leased premises along with an adjoining property, the opinion said.

A controversy then ensued between the parties whether the tenant had an obligation to make any decision or exercise its right of first refusal to purchase the leased premises from the landlord, the opinion said.

The landlord then executed the written agreement to sell the property to the third party, the opinion said.

The third-party, however, subsequently terminated the written agreement pursuant to its due diligence provision.

After that happened, the landlord received other offers from interested third parties but elected not to consider any of these offers while the lease remained in effect.

When the tenant exercised its option to renew the lease, the landlord elected to terminate the lease early by paying the requisite $100,000 in order to market and list for sale both the leased premises and the adjoining property, the opinion said.

On March 9, 2016, the landlord sent a letter and a $100,000 check to the tenant that constituted the landlord’s notice of termination of the written lease.

In the letter, the landlord also sought written confirmation

that the tenant would vacate from the leased premises in a timely fashion.

According to the opinion, the tenant received the letter and the check on March 13, 2016.

Since the landlord never received such written confirmation, it initiated a declaratory judgment action against the tenant in the Montgomery County Common Pleas Court, seeking, among other things, a declaration that the landlord properly terminated the written lease and the tenant's right of first refusal terminated contemporaneously with the written lease.

Although the tenant never confirmed its intention to vacate from the leased premises, it deposited the check on June 9, 2016, the opinion said.

When the tenant failed to vacate from the leased premises in a timely fashion, the landlord also filed a complaint for confession of judgment for possession and money against the tenant.

On Oct. 13, 2016, the landlord ultimately obtained possession of the leased premises by way of a writ of possession it obtained in connection with the confessed judgment for possession.

After receiving possession of the leased premises, the landlord sold the leased premises and the adjoining property to one of the previously interested third parties.

A bench trial occurred in the declaratory judgment action.

The trial court held that the landlord properly terminated the written lease on June 13, 2016, 90 days after the tenant received the letter and the $100,000 check, as per the terms and conditions of the written lease, and, as a result, the tenant's right of first refusal was deemed ineffective as of that date of termination.

The tenant then appealed the trial court's ruling to the Superior Court.

Quoting *T.W. Phillips Gas & Oil v. Jedlicka*, 42 A.3d 261 (Pa. 2012), the Superior Court in *Tri-State* highlighted that a lease is in the nature of a contract and is controlled by principles of contract law and that it must be construed in accordance with the terms of the agreement as manifestly expressed, and the accepted and plain meaning of the language used, rather than the silent intentions of the contracting parties, determines the construction to be given the agreement.

The Superior Court in *Tri-State* went on to emphasize that the intent of the parties to a written agreement is to be regarded as being embodied in the writing itself and that the whole instrument must be taken together in arriving at contractual intent.

When addressing the merits of the appeal, the Superior Court in *Tri-State* relied upon the trial court's reasoning.

In response to the tenant's argument that the trial court erroneously determined that the written lease terminated on June 13, 2016, the Superior Court in *Tri-State* noted the trial court's interpretation of the following language in the written lease: "Lessor shall have the right to terminate this lease at any time during any term upon 90 days prior written notice of termination to lessee and payment to lessee of a termination fee of $100,000."

The Superior Court in *Tri-State* supported the trial court's interpretation of the words "payment to," together in context with the remainder of the provision, to mean that the landlord had properly terminated the written lease as of June 13, 2016, 90 days after the tenant admitted received the letter enclosing the $100,000 check.

Moreover, the Superior Court in *Tri-State* affirmed the trial

court's determination that it was not relevant when the tenant deposited the check enclosed with the letter.

In response to the tenant's argument that its right to refusal was violated, the Superior Court in *Tri-State* upheld the trial court's decision that when the written lease terminated, so too did the right of first refusal.

In doing so, the Superior court in *Tri-State* agreed with the trial court that the tenant failed to present any evidence, a viable argument, or applicable law in support of a claim that the right of the first refusal somehow survived the proper termination of the written lease.

Lessons Learned

The Superior Court's decision in *Tri-State* emphasizes the importance of drafting legal documents, especially written leases, in a detailed and clear manner to avoid any potential litigation as a result of ambiguous language or unintended consequences.

The written lease in *Tri-State* was strictly enforced, which allowed the landlord to terminate it and sell a highly valuable piece of land to a third party.

— Clementa Amazan, an associate at Nochumson P.C., is the co-author of this article.

Post Excerpt It is not uncommon for a tenant, especially in the commercial lease context, to ask for and obtain the right to purchase the leased premises from a landlord during the lease term.

Vertical Position 20%

Natalie Klyashtorny Named Shareholder of Nochumson P.C.

Natalie represents individuals, professionals, real estate developers, and investors, and small to medium-sized businesses (SMBs) in commercial transactions, real estate disputes, business disputes, and with regards to their employment and workforce issues.

Since 2015, she has been named by Philadelphia Magazine as a Super Lawyer in the field of Business Litigation, and, previously, in 2007, 2008, 2010, 2011 and 2012, she was named by Philadelphia Magazine as a Pennsylvania Super Lawyer Rising Star.

A graduate of Temple University School of Law, Natalie Klyashtorny has played a significant leadership role in the Philadelphia legal community for over a decade. During this time, Natalie has served the Philadelphia Bar Association as Chair of its Young Lawyers Division, Assistant Treasurer and member of its Cabinet and Board of Governors. In January 2022, Natalie will become Chancellor of the Louis D. Brandeis Law Society, the Jewish law society dedicated to advancing and enriching the personal and professional interests of its members.

“Natalie’s experience and dedication to our clients and the legal community has made her an obvious choice to move forward in a leadership position with the firm,” states Nochumson P.C.’s founder, Alan Nochumson. “Time and time again, she has shown herself to be an exceptional litigator and she is very passionate about getting results for her clients. I am extraordinarily pleased to have Natalie working with me as a shareholder as the firm continues to grow.”

Natalie is admitted to practice law in the Commonwealth of Pennsylvania, the State of New Jersey, the United States District Court for the Eastern District of Pennsylvania, and the United States District Court for the District of New Jersey.

About Nochumson P.C.

Established in 2006, Nochumson P.C. is a boutique law firm with a team of attorneys with more than 75 years of combined legal experience whose golden rule is to “treat others like how you would like to be treated”. For us, a people-first approach means clients are treated like family, friends, and neighbors—not just another name in the system. We become invested in these connections, offering sensible and cost-effective representation to help clients achieve their goals.

Post Excerpt Natalie Klyashtorny has been elevated to the position of shareholder of Nochumson P.C. In this new role, Natalie will be taking the lead on all the firm's litigation, business counseling, and employment law matters.

Vertical Position 50%

It's Always Zoning in Philadelphia

Philadelphia may be an old city, but as one travels through many of the city's neighborhoods, one notices a lot of new development taking place, and with any new development, whether residential or commercial, zoning brings a host of questions and issues. Most people have a general understanding of the idea of zoning. You would not want a loud, large sports bar opening next door to the new home you just bought nor would you appreciate a busy restaurant opening on one of the cities' small side streets where the neighborhood children play. As such, the City makes some rules meant to preserve neighborhoods and allow businesses to prosper in a way that does not negatively affect the community.

In this blog, we offer a basic introduction to zoning in Philadelphia and how our team can help you navigate the process as a real estate developer.

What is Zoning in Philadelphia?

At the most basic level, zoning is the regulation of the land and its development in the city. In Philadelphia, zoning is set by the district. All of the rules are set by the Zoning Code, with its purpose being "to guide the land use and

development of the City and in so doing, promote the public health, safety, and general welfare of its citizens and visitors.” Philadelphia revamped its Zoning Code in 2012 and created a detailed map of Philly’s neighborhoods, divided by housing or business type. This allows the City to guide the nature of development. For instance, building heights are regulated depending on the neighborhoods. Each property in Philly is zoned under a particular category – i.e. residential, industrial, retail sales – and a real estate developer cannot go against it without approval from the local community and the Zoning Board of Adjustment (ZBA).

There are 10 categories of zoning in Philadelphia:

- Residential
- Retail sales
- Public, civic, and institutional
- Office
- Commercial services
- Vehicle and vehicular equipment sales and services
- Parks and open space
- Wholesale, distribution, and storage
- Industrial
- Urban architecture

Because things are never that simple, within each of these categories are various subcategories, just to add to the confusion.

Exceptions to the Rules

Philadelphia has an established Zoning Board of Adjustment (“ZBA”) dedicated to reviewing citizen input and, assuming all proper procedures are followed, granting requests for exceptions to the rules. There are many different types of exceptions granted and they are dependent on the neighborhood, the details of the proposed plan, and even who happens to be on the ZBA at the time. Because of this, discussing your

plans, predicaments, and overall business strategy with an experienced team of land use and zoning attorneys can go a long way to effectively present your case in the event your development requires an exception.

Over the years, we have helped countless real estate developers in dealing with the various City agencies and boards in seeing their projects to completion. In addition, our interactive Land Use and Zoning Analysis Tool leverages Philadelphia's open-source data to draw valuable and helpful information specific to your project and development.

At Nochumson P.C., we are more than legal counsel. We are people serving our neighbors and community in Pennsylvania and New Jersey. Knowing that real communication between real people can help lead to real positive results, our team of attorneys are available 24/7 to help answer your legal questions and to fight for you with skill and fortitude, whatever the case may be. When you hire us, you can expect a sensible and cost-effective approach to legal counsel. We think fast, think ahead, and get things done. Contact us today or call us at (215) 399-1346 to see how we can represent you.

Post Excerpt In this blog, we offer a basic introduction to zoning in Philadelphia and how our team can help you navigate the process as a real estate developer.

Vertical Position 100%

Court: Plaintiffs Carry

Burden of Proof in Property Damage Cases

In *Roberts*, Elisabetta Roberts owned a townhome adjacent to a property purchased and demolished by Lily Development, the opinion said.

After the demolition occurred, Lily Development subdivided the property into three separate and distinct lots and constructed a townhome on each lot.

Roberts asserted that her townhome was seriously damaged as a result of the negligent demolition and construction activities of Lily Development and other related parties, the opinion said.

Specifically, Roberts claimed the demolition and construction activities damaged the shared party wall and that Lily Development did not take the appropriate steps to prevent or fix the damage.

Furthermore, Roberts alleged that Lily Development continuously interfered with her use of her property over the construction period, the opinion said.

Roberts filed a complaint asserting causes of action for negligence, private nuisance and trespass.

At trial, Roberts' expert testified that during the demolition phase, Lily Development left a depression at the bottom of the party wall that separated Roberts' home from the previously existing adjoining building structure, causing water to pool and seep into the basement of Roberts' townhome, the opinion said.

Furthermore, according to Roberts' expert, Lily Development did not attach the newly constructed townhome to the party

wall, leaving the wall unstable as well as a gap that allowed moisture to accumulate, causing the wall to deteriorate.

Roberts' expert also explained that the party wall would eventually bow, causing structural damage to the townhomes on both sides.

According to Roberts' expert, completion of repairs would take a couple of months and require opening the wall of the first floor of the neighboring townhome, and possibly the second and third floor walls, which would make the repairs extremely difficult and expensive, as well as disruptive.

Roberts did not present any evidence she contacted her new neighbor requesting permission to conduct the repairs or precisely how expensive the repairs would be to complete, the opinion said.

Roberts attempted to produce a written repair cost estimate, but the trial court excluded it as hearsay, as she did not present the person who prepared the report as a witness.

However, Roberts did testify as to her personal belief of the value of her townhome—between $475,000 and $579,000—assuming all issues plaguing it were properly remediated, the opinion said.

Roberts testified that she did not believe her property with the current condition of the townhome was salable given the condition of the party wall.

According to Roberts, she believed that the value of the land was $172,000, and she guessed that she could potentially sell the property with the townhome for $250,000, the opinion said.

The jury entered a verdict in her favor on negligence and private nuisance, and in Lily Development's favor on trespass.

The jury awarded Roberts $550,000 for negligence, $2,000 for private nuisance, and $350,000 in punitive damages for a total

of $902,000, the opinion said.

In response to Lily Development's post-trial motions, the trial court granted judgment notwithstanding the verdict on Roberts' negligence cause of action. In doing so, the trial court reasoned that Roberts failed to establish that the damage to her property was permanent or produce any evidence of the cost to repair the damage.

In granting Lily Development's motion for judgment notwithstanding the verdict, the trial court concluded that Roberts failed to establish that the damage to her land was permanent because it was unclear whether the new next-door neighbor would allow work to be done on their side of the party wall.

Roberts appealed the trial court's ruling to the Superior Court, arguing that the evidence presented at trial established that the damage to her townhome was permanent and decreased the value of her property.

Quoting *Kirkbride v. Lisbon Contractors*, 560 A.2d 809 (Pa. Super. Ct. 1989), the Superior Court in *Roberts* highlighted that "a permanent injury to real estate is limited to those instances where the damage was caused by a de facto taking or where the injury was unequivocally beyond repair."

The Superior Court in *Roberts* noted that the trial court relied upon *Slappo v. J's Development Associates,* 791 A.2d 409 (Pa. Super. Ct. 2002) when making its ruling.

According to the Superior Court in *Slappo*, "if the land is not reparable, the measure of damage is the decline in market value as a result of the harm" and "the plaintiff has a duty to present sufficient evidence from which a jury can compute the proper amount of damages with reasonable certainty".

However, the Superior Court in *Slappo* emphasized that, if the repairs are possible, the proper measure of damages is the

lesser of the cost of repair or decrease in the market value of the property.

In *Slappo*, the plaintiff brought an action against a developer for ejectment and trespass after the developer allegedly damaged some of her farmland by removing trees, constructing a waste and sewage facility, installing utility poles, removing fence posts and changing the contour of the land by excavating.

The developer in *Slappo* relied on a survey that incorrectly identified the boundary between the properties. The jury in *Slappo* found in favor of the plaintiff, but the trial court granted a new trial on compensatory damages. The trial court in *Slappo* reasoned that the plaintiff failed to produce any evidence of the cost to repair her land.

The Superior Court in *Slappo* affirmed the trial court's ruling, pointing out that the plaintiff presented no evidence as to the cost of repairs and rejecting the plaintiff's argument that the jury could have used its common sense to determine that repairs were impractical and would have exceeded the value of the damaged property.

With no estimate of the cost of repair, the Superior Court in *Slappo* reasoned that the jury could not compare the repair cost with the decrease in the market value of the property.

However, the Superior Court in *Roberts* distinguished the factual circumstances set forth in *Slappo*, in that repairs in *Roberts* would be possible but require extensive, albeit temporary, damage to the neighboring townhome.

Further, the Superior Court in *Roberts* did not read the ruling rendered by the Superior Court in *Slappo* as prohibiting an appeal to a jury's common sense, but instead concluding that the evidence in that case was insufficient to facilitate a determination on the question of permanent damage.

Instantly, Roberts' evidence established that Lily Development damaged the party wall and then effectively sealed in the damage such that repairs, although possible, would be extremely unlikely to occur.

The Superior Court in *Roberts* nonetheless openly expressed dismay that there was no evidence that Roberts ever contacted the neighboring property owner.

At trial, Roberts expressed reluctance to reach out to the neighboring property owner because "it would not have been neighborly to drag her neighbor into court."

Roberts' explanation was not well taken by the Superior Court for several reasons.

To start, the Superior Court in *Roberts* noted that Roberts did not cite case law relieving a plaintiff of the burden of proof because of the plaintiff's reluctance to contact or subpoena a potentially unwilling witness.

Second, the Superior Court in *Roberts* posited that one could argue that the neighborly course of action would have been to inform the neighboring property owner of the looming structural damage to their townhome.

Also frustrating to the Superior Court in *Roberts* was Roberts' failure to introduce into evidence an estimate of the repair costs. If the cost of repair approached or exceeded the amount at which Roberts valued her townhome, the issue of permanent versus reparable damage would have been obviated.

Nevertheless, the Superior Court in *Roberts* concluded the trial court erred in granting judgement notwithstanding the verdict, determining that Roberts' evidence permitted the jury to find that Lily Development failed to make simple repairs while the party wall was exposed and created an extremely expensive and difficult repair project that would depend on the neighboring property owner's willingness to tolerate

substantial and prolonged disruption to their enjoyment of their townhome.

Accordingly, even without evidence of the neighbor's intentions, the Superior Court in *Roberts* concluded that a jury could reasonably find that the needed repairs would never occur and that Roberts' townhome was unequivocally beyond repair. Thus, the damage effectively became a part of the property.

Lessons Learned

Although Roberts received a favorable outcome, the Superior Court's opinion highlights that plaintiffs carry the burden of proof in property damage cases.

It is imperative that the plaintiff presents adequate evidence that the property damage is unequivocally beyond repair, even if it does lead to being "unneighborly."

— Clementa Amazan, an associate at Nochumson P.C., is the co-author of this article.

Post Excerpt In Roberts v. Lily Development, 2021 Pa. Super. Unpub. LEXIS 709 (March 16, 2021), the Pennsylvania Superior Court recently decided that a verdict in favor of a homeowner in Philadelphia was proper although the trial court held that the homeowner failed to establish that the damage to her home was permanent.

Vertical Position 100%

Differences Between Gross Lease and Net Lease

One of the most attractive aspects of commercial real estate is the ability to negotiate and structure deals in any way that fits certain criteria. In the sale of a commercial property, typically an entire interest in the property is sold for a single price. However, there is no “one-size-fits-all” approach to commercial leases. At the highest level, there are two main types of commercial lease: Gross lease and Net lease. The type of lease affects who pays for several expenses associated with the property, and as a result, affects how certain interests are aligned in the landlord-tenant relationship. Below we look at the differences between a Gross lease and a Net lease.

What is a Gross Lease?

A gross lease is often considered the most tenant-friendly lease type because the rent is all-inclusive. Under a gross lease, the tenant pays a single flat fee for the use of the space. The landlord agrees to pay for any and all expenses that come with the property and its use, including taxes, insurance, utilities, and often repairs. Landlords factor in the costs that they are taking on under a gross lease into the cost of the rent. There are advantages and disadvantages to this approach for each party. Gross leases tend to be easier for the tenant to manage, allowing for predictable expenses and less responsibility for the building. Gross leases can also involve some variation for the landlord, as prices fluctuate any savings or extra costs go to the landlord.

What is a Net Lease?

A net lease, most commonly known as a Triple Net or NNN lease, is one of the more common lease structures that you'll find in commercial real estate. A net lease requires the tenant to assume most of the operating costs of the property separately from the base rent. These expenses are often known as the three nets – insurance, maintenance, and property taxes. They can vary from month to month, meaning it is a less predictable approach for the tenant. A net lease reverses the advantages and disadvantages of a gross lease. Tenants are motivated to reduce their utility consumption, but landlords have no immediate incentive to make energy efficiency retrofits beyond the long-term value of their property, and no easy way to recoup their expenses. Like the gross lease, however, the tenant and the landlord can agree to craft a net lease where a tenant will pay more or fewer of the associated operating costs.

Differences between Gross & Net Leases

Gross leases and Net leases can actually cost the same amount to a tenant, but there are reasons a landlord may choose to use one structure over another. With Gross leases, landlords have a more easily understood offering, since tenants can often get confused by the whole "base rent, additional rent" side of net leases. All the landlords have to quote is a single rate, which makes it fairly straightforward for tenants to understand. Net leases can protect both the landlord and tenant in different ways. Landlords are protected if the costs associated with operating the property (the NNNs) increase because those expenses are passed directly on to the tenants that benefit from utilizing the site. Tenants also have the ability to audit the common area maintenance expenses to ensure that the common areas are not only maintained properly but are not breaking their budget. Within Gross and Net leases, there are more granular differences depending on each

case. Retaining an experienced and thorough attorney is advisable to find the best strategy to take when developing your lease.

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Vertical Position 100%

Nochumson and Klyashtorny Named As “Super Lawyers 2021”

This is an honor reserved for those lawyers who exhibit excellence in practice! This year, Alan Nochumson was named for his dedication in the category of Real Estate while Natalie Klyashtorny was chosen for her astonishing performance in Business Litigation.

The selections for this list are made by the research team at Super Lawyers, which is a service of the Thomson Reuters, Legal. Each year, the research team at Super Lawyers undertakes a selection process that includes a statewide survey of lawyers, independent evaluation of candidates by the attorney-led research staff, a peer review of candidates by practice area, and a good-standing and disciplinary check.

Each year, only 5% of attorneys practicing law in Pennsylvania receive this recognition.

About Nochumson P.C.

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Post Excerpt We are proud to announce that our attorneys at Nochumson P.C. have been once again recognized as the 2021 Pennsylvania “Super Lawyers”.

Vertical Position 20%

Landlord’s Responsibility for

Lead-Based Paint Disclosure

Once used widely in homes and most other buildings, lead-based paint was banned in the United States in 1978, due to health and safety concerns. Lead has been proven to be especially hazardous to small children, with exposure potentially leading to anemia, kidney, and possible brain damage. In 2012, the Philadelphia City Code was amended to include the Philadelphia Lead Paint Disclosure and Certification Law. The law requires owners of properties built before 1978 to provide the tenant with certification prepared by a dust wipe technician stating that the property is either lead-safe or lead-free. Without doing so, the landlord or property manager cannot execute a new or renewed lease or receive or renew a rental license.

Where Can Lead Be Found

It is important to know which areas of a home present the greatest risk and where to look for lead-based paint hazards. Most commonly. hazard spots are found in high traffic areas within the home, including materials that get moved around or are touched frequently. Specifically, the following areas are where lead-based paint will be most often present:

- Handrails
- Stairs
- Porches
- Window sills and frames
- Doors and door frames
- Trimming

Look for chipping, cracking, peeling, chalking, or even dampening, as this may disturb lead paint and leave particles to be ingested.

Lead Paint Disclosure Requirements for Landlords

Upon change of occupancy, landlords must provide a

Philadelphia Department of Public Health (PDPH) Lead-Safe Certificate or Lead-Free Certificate to every new tenant who will be residing in a property built before 1978. The landlord is required to send the PDPH a copy of the lead-safe certificate signed by the tenant.

On a federal level, landlords must:

- Disclose any known information on the presence of lead-based paint in the building. That includes any common areas like laundry rooms or lounges.
- Include a lead disclosure attachment to the lease or language in the lease that includes a Lead Warning Statement, and lets tenants know you've complied with all notification requirements.
- Keep lead-based paint disclosure forms for at least three years after the lease of an apartment or other property.
- Provide an EPA-approved pamphlet on identifying and controlling lead-based paint hazards to tenants.

Obtaining the proper lead-based paint disclosure documentation will keep you and your property compliant and your tenants safe. At Nochumson P.C., we are more than legal counsel. We are people serving our neighbors and community in Pennsylvania and New Jersey. Knowing that real communication between real people can help lead to real positive results, our team of attorneys are available 24/7 to help answer your legal questions and to fight for you with skill and fortitude, whatever the case may be. When you hire us, you can expect a sensible and cost-effective approach to legal counsel. We think fast, think ahead, and get things done. Contact us today or call us at (215) 399-1346 to see how we can represent you.

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built before 1978 to provide the tenant with certification prepared by a dust wipe technician stating that the property is either lead-safe or lead-free.

Vertical Position 100%

Certificate of Rental Suitability in Philadelphia

Landlord-tenant laws in Philadelphia can be very confusing for both parties. As a landlord, obtaining your Rental License is the first big, necessary step, but it doesn't end there. Your next step should be to acquire a Certificate of Rental Suitability. The main purpose of the Certificate of Rental Suitability is to ensure that, as a landlord, you are in compliance with the Philadelphia Property Maintenance Code.

What is the Certificate of Rental Suitability?

In February 2006, the City of Philadelphia issued a new law that requires a landlord to certify that a rental unit is hospitable for living. It also allows the City to ensure that a landlord has purchased the landlord's Commercial Activity License and Rental License. While obtaining the Certificate of Rental Suitability is free of charge, many landlords overlook this step, which can cause headaches down the road. By law, landlords must provide the certificate and the City's Partners for Good Housing handbook to the tenants at the inception of the tenancy.

A Certificate of Rental Suitability requires the landlord to certify the 3 following things:

- That there are no open code violations on the rental

unit
- That the rental unit has the required fire protection and smoke detection equipment
- That the landlord has provided the tenant with the City’s Partners for Good Housing handbook

Unlike many other certifications and licenses issued by the City, no inspections of the property are performed by the City in connection with the issuance of the Certificate of Rental Suitability, and the landlord is otherwise not obligated to retain duly licensed professionals to validate the condition of the leased premises prior to its issuance. Rather, the Certificate of Rental Suitability merely contains self-serving statements made by the landlord concerning the condition of the leased premises and the landlord’s obligations to the tenant under the law.

Recently, there appears to be a movement by courts in Philadelphia to prevent a landlord from collecting rent and obtaining possession of leased premises even after a tenant defaults under the lease agreement if the landlord fails to obtain this self-serving Certificate of Rental Suitability and illustrate proof that the certificate and the City’s Partners for Good Housing handbook were delivered to the tenant. We, therefore, strongly recommend that, if you are a landlord leasing residential property in the City, you obtain the Certificate of Rental Suitability and deliver it (along with the City’s Partners for Good Housing handbook) to your tenants, in order to prevent any of them from being able to make this legal argument.

At Nochumson P.C., we are more than legal counsel. We are people serving our neighbors and community in Pennsylvania and New Jersey. Knowing that real communication between real people can help lead to real positive results, our team of attorneys is available 24/7 to help answer your legal questions and to fight for you with skill and fortitude, whatever the case may be. When you hire us, you can expect a

sensible and cost-effective approach to legal counsel. We think fast, think ahead, and get things done. Contact us today or call us at (215) 399-1346 to see how we can represent you.

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Vertical Position 100%