

(cont'd from pg1)

(b) All renting or leasing of real estate for a period of time less than five years shall be held to convey only the right to possess and enjoy such real estate, to pass no estate out of the landlord, and to give only the usufruct unless the contrary is agreed upon by the parties to the contract and is so stated in the contract.

For practical purposes, an important aspect of this is that a usufruct is not freely assignable. Accordingly, a Lease granting only a usufruct is not freely assignable. However, despite the fact that a such lease and a usufruct do not convey an interest in land, Georgia law does provide that leases and usufructs of land, or of any interest in land and assignments of leases or usufructs may be recorded as long as the document is executed with the formality prescribed for the execution of deeds to land. The recording will act as notice of the interest of the parties to the lease or usufruct in the property described in the instrument and of the interest of a person holding an assignment of any interest in the lease or usufruct. O.C.G.A. § 44-2-9.

In Florida, however, a lease conveys an interest in property- the lease passes a present interest in property for the term specified. Florida case law has defined a lease as a conveyance of a portion of an owner's interest in his estate, for a term shorter than the owner's term. DeVore v. Lee, 158 Fla. 608, 30 So. 2d 924 (1947); Trump Enters v. Publix Supermarkets, Inc., 682 So. 2d 168 (Fla. 4th DCA 1996). Since a lease conveys an interest in property, in order for a tenant to protect its interest in the conveyance, any lease for a term of one year or longer must be recorded in order to be "good and effectual in law or equity against creditors or subsequent purchasers for valuable consideration and without notice." Fla. Stat. § 695.01(1). v

Construction

(Continued from page 2)

litigation which concerns specific lease language. This may become especially important if the contested language involves lease renewal or extension, and the landlord is arguing against an interpretation, which renews or extends the tenancy. A typed provision of a lease (or, a lease provision that has been specifically inserted by a party) will prevail over a printed provision of a form lease. Atlanta Baggage and Cab Co. V. Loftin, 88 Ga. App. 98, 76 S. E.2d 92; (1953), Westminster Group, Inc. V. Perimeter 400 Partners et al., 218 Ga. App. 293, 460 S.E.2d 827 (1995).

All prior negotiations between the parties, whether oral or written, are merged into the final written and executed lease contract. Importantly, where the lease provides that it "contains the entire agreement of the parties hereto and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein, shall be of any force or effect" the tenant will not be successful on a claim that the landlord fraudulently induced the tenant into entering into the lease by misrepresenting facts concerning lease issues. Cristal v. Harmon, 137 Ga. App. 153, 223 S.E.2d 210 (1976). This type of provision, called an "entire agreement" clause or a merger clause, is an important provision to include in a lease, amendment to lease, assignment of lease and renewal of lease because often a tenant against whom there is pending litigation will raise fraud in the inducement as a defense to a lawsuit for rent or

A lease must contain all the "essential ingredients" of a contract in order to be valid and binding including but not limited to parties that are able to contract..

other charges.

In Florida, an interest in real estate cannot be made, assigned or surrendered unless there is a writing signed in the presence of two subscribing witnesses, the landlord, or the person seeking to

either assign or surrender the interest. Fla. Stat. § 689.01

Florida also applies the general rules of contract construction to leases, and the lease must be construed to give effect to the intent of the parties. Each provision of a lease must be given meaning and effect but at the same time, the lease and its terms must be read as a whole.

In Florida, ambiguous or uncertain provisions of a lease are labeled as either latent (hidden) or patent (unhidden). An ambiguity on the face of a lease which is addressed by the lease is a patent ambiguity, and Florida courts will not attempt to resolve the ambiguity by rewriting

the contract on a matter the parties to the lease have attempted to cover. Landis v. Mears, 329 So. 2d 323 (Fla. 2d DCA 1976). If the ambiguity is latent, it concerns an issue not addressed by the parties to the lease and is not expressed in the contract, Florida Courts may attempt to determine what the parties may have included in the lease in the event they had considered the situation or occurrence which created the ambiguity. Finger Lickin Food Corp. v. Campbell, 407 So.2d 235 (Fla. 3d DCA 1981). When the provisions of a contract or lease are clear and unambiguous, no parol or extrinsic evidence is admissible to vary the terms.



A Note About the 2000 General Assembly From Representative John Wiles

This year the Georgia Legislature was consumed by Education reform, which passed after much debate. As a result look for school property taxes to increase. We also dealt with urban sprawl by creating a green space initiative. The plan is financed with \$33 million a year to spend acquiring land for passive use. This is good news for the metro Atlanta area. This initiative will help ensure our future quality of life and still protect privately owned land values.

If I can ever be of service please contact me. My legislative number is 404-656-0314, or at my law office 770-426-4619 or my campaign website, www.johnwiles.com

Sincerely,
John

*Disclaimer
These articles are provided to you for informational purposes only and not for specific legal advise. If you have specific questions concerning these matters we recommend that you contact Wiles & Wiles or other legal advisors.*

Wiles & Wiles

800 Kennesaw Ave.
Suite 400
Marietta, Georgia
30060



Check out our
new

Phone: 770-426-4619

Fax: 770-426-4846

Email: info@evict.net

*Wiles & Wiles
The Landlord's
Lawyer*



John Wiles-Managing Partner

Jack Cotney-Partner

Janel Wiles- Partner

Susann Estroff-Attorney

Jason Baker- Attorney

Denise McNair-Office

Manager

Vic Newmark-Paralegal

Trisha Watson -Paralegal

Jean Drake- Paralegal

Debbie Grisham- Legal

Secretary

Deborah Puckett -

Receptionist

WE MAY HAVE A NEW HOME BUT THE TEAM IS STILL THE SAME

Dear Friends and Col-
leagues:

We hope you enjoy this newsletter, first in a series of newsletters which we plan to provide on a quarterly basis. This first newsletter contains PLANNING AHEAD TO AVOID TENANT PROBLEMS – Part I. and THE LEASE: GENERAL CONSIDERATIONS. each of which start a series of articles which shall continue addressing different aspects of the law and different situations. Furthermore, we will keep you up to date with any new court dec i-



sions or statutes which affect our industry.

We have lots of exciting news. On May 1, 2000 we moved to our new office. As many of you are aware we have built a building on Kennesaw Avenue in Marietta easily accessible from I-75.

Our new address is 800 Kennesaw Avenue, Suite 400, Marietta, Georgia 30060 . Our telephone number remains the same.

We also wish to welcome Jean Drake to our law firm. Jean is a paralegal with many years experience and will be a valuable asset to our law firm.

We look forward to hearing from you with topic suggestions or questions with regard to our newsletter. Thanks,

Wiles & Wiles

PROFITABLE PROPERTY MANAGEMENT
 A QUARTERLY NEWSLETTER FOR REAL ESTATE PROFESSIONALS

INSIDE THIS ISSUE:

<i>Planning Ahead</i>	1
<i>The Lease</i>	1
<i>Construction of the</i>	2
<i>From the Partners</i>	4

Come see our new look!

As of May 1st Wiles & Wiles has a new home. The staff is excited and exhausted but our new home is beautiful. We are going to spend the next few months getting the place put together but look for an office warming party in the fall of 2000 .

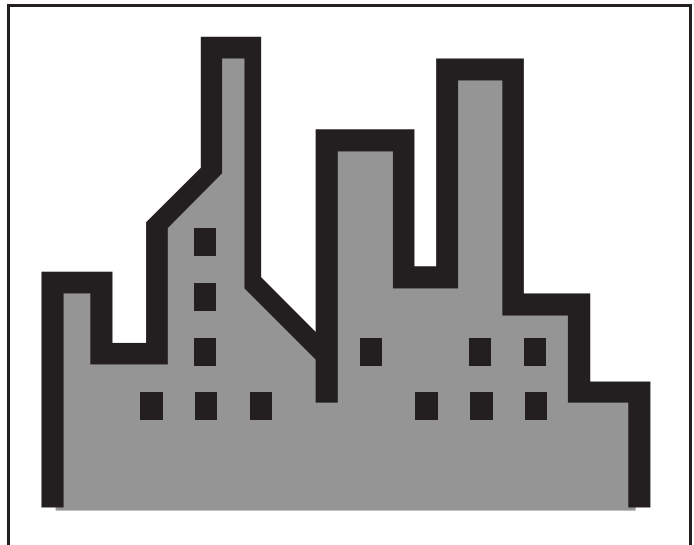
Useful Web Sites:

- GA Secretary of State
www.sos.state.ga.us
- Facility resources
www.facilitiesnet.com
- Property resources online
www.property-link.com

Credit Bureaus

- www.equifax.com
- www.experian.com
- www.tuc.com

PLANNING AHEAD TO AVOID TENANT PROBLEMS – PART I



Cont'd pg 2

THE LEASE: GENERAL CONSIDERATIONS

A. Interest in Land:

In Georgia, a tenant in possession does not have an estate, but has a **usufruct** - "the temporary right of using a thing without having the ultimate property or full dominion of the substance." Ga. Real Est. Law,

327. O.C.G.A. § 44-7-1 provides that(a) The relationship of landlord and tenant is created when the owner of real estate grants to another person, who accepts such grant, the right simply to possess and enjoy the use of such real estate

either for a fixed time or at the will of the grantor. In such a case, no estate passes out of the landlord and the tenant has only a usufruct which may not be conveyed except by the landlord's consent and which is not subject to levy or sale.
 (cont'd pg 3)