

PENN ATTORNEYS

TITLE ALERT

DATE: 04/28/05

RE: Memorandum of Lease

Often, parties to a lease, sublease or agreement have a desire to record a Memorandum of the document rather than the complete document, so as to provide constructive notice to subsequent purchasers, mortgagees and creditors of the existence of such lease, sublease or agreement. Most parties prefer the Memorandum because it offers more privacy and is less cumbersome and less expensive than recording the entire lease, sublease or agreement.

However, if a Memorandum is recorded in lieu of recording the entire lease, sublease or agreement, there are certain criteria that must be followed in order to comply with the Pennsylvania statute (21 P.S. Section 405). Namely, the Memorandum must be executed by all parties and acknowledged by the lessor and contain at least the following information with respect to such lease, sublease or agreement:

1. The name of the lessor in such lease, sublease or agreement;
2. The name of the lessee;
3. The addresses of such parties;
4. A reference to the date thereof;
5. The description of the demised premises;
6. The date of commencement of the terms of the lease, if a fixed date and if not a fixed date the full provisions pursuant to which such date of commencement is to be fixed;
7. The term of the lease;
8. If the lessee has a right of extension or renewal, the date of expiration of the final period for which such right is given;
9. If the lessee has a right of purchase or refusal on the demised premises or any part thereof, a statement of the term during which said right is exercisable.

The caveat here is that if presented with such a Memorandum when insuring a leasehold transaction, it must comply with the above listed requirements. On the other hand, if the search on a particular property discloses a Memorandum of Lease of record DO NOT disregard it just because it does not meet all of the statutory requirements; but treat it as an encumbrance despite such flaws.

If you have any questions, please contact your servicing Penn Attorneys office.

Penn Attorneys Title Insurance Co.

State Headquarters
900 State Street, Ste 320
Erie, PA 16501
814-454-8278 * 800-352-2216

erie@pennattorneys.com

Eastern Pennsylvania Office
New Bridge Center, Ste 317
480 Pierce Street
Kingston, PA 18704
570-288-1108 * 800-929-4024

epro@pennattorneys.com