

2

SEPTEMBER

2010

KEVIN F. JURSIANSKI, ESQ.
COMMERCIAL LEASE NEWSLETTER

Parking Issues For Commercial Tenants – Part I

While it is certainly important for residential Tenants to have a parking space or spaces for the occupants of the residential units versus parking at a less acceptable location, it is absolutely critical for commercial and retail Tenants to have adequate parking not only for the Tenants and staff but as importantly and possibly more importantly for the prospective customers, clients and business invitees.

This Newsletter will focus on some fundamentals of commercial parking with the following month's Newsletter to address specific case law and specific fact patterns which have occurred in the past, which may occur in the future and also will address some unique situations which are now occurring due to the troubled economic times. Some of those situations result from Landlords making use of parking space not only creating the traditional headache, i.e., selling off a portion of the outparcel, permanently removing a portion of the parking lot and parking facilities from the commercial Tenant but in today's economic times Landlords are generating sales, promotions, and doing "for pay" parking to third parties, outside parking and other issues, all of which may have an impact, both positive and negative, on a Tenant.

Let's start with the basics:

1. Commercial lease: It is fundamental for the Tenant to have the lease thoroughly reviewed by a real estate professional prior to the Tenant signing.

Unlike the residential tenancy statute, the commercial tenancy does not afford the Tenant with statutory protection as in the residential tenancy statute. One example is the fact that in residential tenancy statute there is a specific format and procedure for escrowing deposits, format for returning deposits and remedies if deposits are not returned. No such provision exists for commercial Tenants. The suggestion is that the legislature believes that commercial Tenants should be sophisticated enough to identify those issues by contract whereas a residential tenancy might not have the same ability.

The same holds true for the diligence of the commercial Tenant in regard to parking. Whether the commercial Tenant intends to utilize the premises for the operation of its business and does not count on clients to visit the facility, the Tenant nonetheless still must have adequate and substantial parking for its staff. Likewise, when the tenancy is for commercial office space, the Tenant not only has to consider this location for staff but also have to consider parking space for its prospective clients and business invitees.

When the space is retail, it becomes absolutely critical to attract potential walk-in retail customers that there be not only adequate but easily accessible parking for all prospective retail customers. In order to do so the Tenant must specifically identify those particular parking spaces in its lease.

2. General Lease Provisions:

In most commercial leases there is a clause addressing parking, some more detailed than others. In general, the Landlord normally inserts in to the lease that there will be adequate parking to service the prospective use by the Tenant. The Landlord, as owner of a commercial building, when the building was completed and in order to get a certificate of completion, would have been required to have normal and necessary parking spaces to allow the building to be utilized for its prospective use.

From the time of the certificate of completion, however, through the time the Tenant would take occupancy, numerous changes could have occurred in reference to the building's usage. For example, it could have gone from a building which had normal or even minimal demands for prospective customer parking, i.e., an accounting office, an attorney's office (which would not normally have high volume clients) to a situation such as medical usage, in some instances dental usage and in the heyday of real estate, real estate offices in which the clients, customers (and potentially staff) resulting in a significant amount of real estate associates that would come in for in person, weekly or more often meetings).

This could cause a tremendous strain on the parking facilities at such buildings. In such situations, if the Tenant had not specifically negotiated for a specific designated number of spaces and ideally identified those specific spaces reserved for the Tenant parking issues could negatively impact the Tenant's business.

Example: A Tenant opens its office space in a retail type strip center and the lease simply generally indicates that it has the opportunity to utilize the overall parking field at the center. In the event the Tenant does not designate reserved parking spaces and/or spaces for its employees, the Tenant can find itself and/or his customers without any available parking spaces in close proximity to the Tenant's business and on certain occasions (such as a medical office opening next door and a real estate office opening on the other side). The Tenant can find itself on certain days without adequate parking for its prospective customers and in certain instances a lack of parking spaces even for its own staff.

3. Specific Identification of Parking Spaces for Employees and Customers

Ideally, the Tenant should identify specific parking spaces for the Tenant's use.

The first criteria would be for the Tenant to identify how many parking spaces would be allocable to that Tenant's particular unit. This would be based upon the current zoning, the Tenant's square footage use as well as the overall square footage of the particular building in which the space is leased. The Tenant then should specifically indicate that it would have identifiable parking spaces for its staff/employees which might be in a less desirable location than for customer parking but, at least, the Tenant would afford its staff/employees specific identifiable parking spaces.

The Tenant should then indicate that in close proximity to its location and based upon, again, the allocable parking spaces to its business, that there would be spaces specifically marked for customers or clients of that particular Tenant's office space reserved solely for their use.

Lastly, if the Tenant was able to secure such by written lease, the Tenant could also require the Landlord to post in a prominent conspicuous location to the parking spaces, parking signs indicating that the parking lot is reserved solely for the commercial Tenants and their employees and customer of this particular building or center and that parking in reserved parking spaces by unauthorized vehicles would be subject to towing pursuant to Florida Statute 715.07.

Next month: Cases and fact patterns

The material contained herein is copyrighted and provided as public service to educate the intended audience. Neither the material contained herein, nor the speaker addressing such material, should be considered as providing legal advice as to a specific case or situation. Your situation may differ and you should consult the attorney of your choice for more information.