

News & Alerts

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For Leases of More Than Five Years, Sealing the Deal Is Essential

The Virginia Supreme Court's May 10, 2018 decision in *The Game Place, L.L.C. v. Fredericksburg 35, LLC*, No. 170631, 2018 WL 2142641 (May 10, 2018) is sure to make both landlords and tenants take a second look at their leases, and will likely leave them with more questions than answers.

The Game Place appeal involved a 15-year commercial lease for a store located in the Central Park shopping center in Fredericksburg. The tenant, The Game Place, paid monthly rent to the landlord for over 13 years. When the business began to struggle, the tenant paid its rent for the month, turned the keys in to the landlord, and closed the store.

The landlord then sued the tenant and its guarantor for the rent due over the remaining 2 years of term left on the lease. The tenant argued that the lease was unenforceable under the Statute of Conveyances because it did not contain a seal or one of the seal substitutes available under Virginia Code § 11-3. The trial court rejected that argument and entered judgment in favor of the landlord, and the tenant appealed to the Virginia Supreme Court.

Virginia Supreme Court Justice Kelsey's opinion in the case is a deep dive into the legal history of the common law seal requirement. The Statute of Conveyances, Virginia Code § 55-2, requires that a lease for a term of more than 5 years be conveyed by deed, and a deed must have certain defined characteristics—one of which is that it must be a "sealed" writing. Fortunately, the traditional wax seal is no longer necessary. The General Assembly relaxed the seal requirement by enacting Virginia Code § 11-3, which offers the following list of substitutes for a seal: (1) "a scroll by way of a seal"; (2) an imprint or stamp "of a corporate or an official seal on paper or parchment"; (3) the use in the body of the writing of the words "this deed," or "this indenture," or "other words importing a sealed instrument," or recognizing a seal; or (4) a proper acknowledgment of a document clearly demonstrating an intent to convey real estate "before an officer authorized to take acknowledgments of deeds[.]"

Unfortunately for the landlord, the lease at issue in *The Game Place* did not include a seal of any kind and did not contain any of the acceptable seal substitutes set forth in § 11-3. Thus, the Virginia Supreme Court held that the lease was unenforceable as to its 15-year term. Importantly, *all of the other provisions of the lease remained binding on the parties*. Because the lease term was invalid, the tenancy was implied from the manner in which the rent was received (monthly). In short, the tenant had a month-to-month tenancy, and since the tenant was current on rent when it packed up and left, it owed nothing more to the landlord.

The decision in *The Game Place* makes clear that when it comes to leases, the seemingly arcane Statute of Conveyances is alive and well until the General Assembly says otherwise. The form of a lease is important, and the seal requirement is one that neither landlords nor tenants can risk ignoring.

The “fix” going forward is relatively simple. Any lease for a term of more than 5 years should be set up in the form of a “Deed of Lease” and should say that it is so in the body of the lease, not just in the title and/or in the recitals, and the signatures at the end of the lease should be set up as “signatures and seals.” Much more difficult, however, is sorting out the effect on existing leases. What constitutes a valid seal substitute under § 11-3 will almost certainly be a point of debate. Should you have any questions about your lease, please contact us.

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