

January 14, 2019

General Assembly Primed to Answer Lease Questions Raised by *Game Place* Case

The Virginia Supreme Court's May 2018 decision in *The Game Place, L.L.C. v. Fredericksburg 35, LLC*, No. 170631, 2018 WL 2142641 (May 10, 2018) raised questions for both landlords and tenants about the validity of their active long-term leases. Hirschler's original alert on the decision is available [here](#). Legislation introduced at the opening of the 2019 Virginia General Assembly aims to answer those questions.

The ruling by the court in the *Game Place* case was that any lease with a term of more than five years is invalid as to its term unless the lease was conveyed by deed of lease including specific language as set forth in the Virginia Code. The lease in *Game Place* was held to be unenforceable as to its full term, and the tenancy continued on a month-to-month basis as implied from the manner in which rent was being paid (monthly), allowing the tenant to terminate its lease on a month's notice to the landlord with full payment of rent through the end of the month. The court offered little additional guidance on application of the ruling. Hirschler has been working with clients to protect or renegotiate existing leases with terms longer than five years.

The *Game Place* decision centered on interpretation of Virginia Code Title 55.2, which requires that a lease for a term of more than five years be conveyed by deed. Under the current Title 55.2, deeds must have certain defined characteristics – one of which is that a deed must be a “sealed” writing. Recognizing that using wax seals on leases was an impractical and outdated practice, years ago the General Assembly relaxed the requirements of Title 55.2 by enacting Title 11.3 to allow various substitutes for a seal. The lease in *Game Place* (and many leases with terms of more than five years) did not contain the language “deed of lease” and did not contain any of the substitutes for a seal allowed by Title 11.3, so was found not to be a valid lease as to its term beyond five years. It is our opinion, and the Virginia constituency seems to agree, that the outmoded statutes must be updated to reflect current leasing practices which often are not structured as deeds executed under seal.

State Senator John S. Edwards of Roanoke has introduced Senate Bill 1080, among other changes to Title 55, to relax the seal requirement by amending Titles 55.2 and 11.3 of the Code. We have also been tracking additional draft bills on the subject, which we expect will be introduced in the House and Senate in the coming days. Efforts to enact amendments to Title 55.2 are supported by many public and private interests in Virginia, including the Virginia Bar Association, Virginia Banker's Association, Virginia Association of Realtors and Virginia Association for Commercial Real Estate.

Hirschler is tracking these proposed amendments and will keep clients informed and prepared. We are happy to answer any questions on the *Game Place* decision, the legislative process and the effects of potential amendments on client interests.

Contacts

Laura Lee Garrett

Partner

804.771.9525

lgarrett@hirschlerlaw.com

Joseph L. Stiles

Associate

804.771.9583

jstiles@hirschlerlaw.com