



Counting the Cost: A View on Lease/Option Agreements

Newspaper headlines declare that the median price of homes in the Denver Metropolitan area seems to be rising. Do the headlines reflect reality? Our law practice positions us to receive regular reports from real estate professionals, appraisers, developers and contractors as well as anecdotal evidence from property owners and business associates. Our industry sources suggest that the price you can expect to receive for your home may be less than what it would have been twelve months ago and that your home may be on the market longer before it sells.

Perceived worsening conditions in the residential real estate market have led many to consider entering into agreements commonly known as Lease/Option agreements. A Lease/Option agreement allows a seller to lease a home to a prospective purchaser who has an option to buy the home at a later date. These agreements are legal traps for the unwary seller. While a well crafted Lease/Option agreement may provide for a higher sale price for the home, a poorly designed one may well yield a disastrous outcome involving a lengthy and expensive legal battle for the seller.

A Lease/Option agreement typically involves little or no down payment and provides only a potential future sale of the property while the prospective purchaser benefits from the present lease of the home. Cases decided by Colorado's appellate courts have held that under certain circumstances, the purchaser under a so-called Lease/Option agreement, who has defaulted on the lease payments to the seller, has, by virtue of the Lease/Option agreement, gained what is called an "equitable interest" in the home. Because of this so-called equitable interest, the purchaser, who has stopped making lease payments, must be foreclosed upon in order to clear the title of the equitable interest.

The foreclosure process is more expensive and, perhaps even more important, takes considerably longer than an eviction procedure under a lease. We recommend that you do not enter into a Lease/Option agreement without consulting with an attorney first. We can structure your Lease/Option agreement in such a way, in all likelihood, as to avoid this equitable interest problem and thus allow for a much less expensive and more rapid repossession of the home if the buyer defaults on the lease payments.

About the author: Curtis Shortridge specializes in civil litigation, business and real estate law and is a frequent lecturer and counselor to real estate professionals, business and property owners in Colorado. Curtis believes the old adage that "an ounce of prevention is worth a POUND of cure."

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ON A PERSONAL NOTE...

We would like to extend a special thanks to those of you who attended our September Open House. It was an exciting evening and we were delighted to receive your compliments on our new business home as we renewed old friendships and deepened new ones, sharing wonderful food and great music. We hope that you enjoyed yourself as much as we did!

On a personal note, as our Open House drew to a close on September 5th, my oldest daughter, Jenny, grew weary of waiting for "Grandpa" to arrive at the hospital. For me it was a 'grande finale' to a great evening to welcome into our family a very handsome 8 lb/6oz-21" boy, my grandson, Tyler Scott Martin. Life is good.

As we approach the Thanksgiving Holiday our thoughts center upon our relationship with you as something of great value to us. Thank you for your confidence in our firm and in us individually. Please accept our warmest wishes for a happy and abundant holiday season with your family and loved ones. We hope to see you very soon!

Best regards,

Bob Stewart

Bob Stewart is Managing Shareholder of the firm and specializes in estate planning, trusts and probate as well as business law and taxation. He is highly regarded as a guest lecturer among industry, professional and civic groups and has been recognized through peer review to be preeminent in his field.

“So, You Want to AVOID a Lawsuit?”

In our increasingly litigious society, some preventative measures that individuals and business owners can take to reduce the risks of common potential lawsuits are:

- Get agreements in writing with a well-crafted contract.
- Confirm verbal understandings with a letter or memorandum.
- Be wary of standard forms and contracts.
- Have an attorney review your contract before you sign it.
- Have a shareholder, buy-sell or buy-out agreement with business partners.
- Perform a trademark search prior to launching an expensive ad campaign using a new name or mark.
- Protect your tradename or trademark with federal registration/protection.
- Prepare a definitive employee handbook with adequate legal disclaimers.
- Document employee disciplinary actions.
- Prepare a severance agreement with a release for terminated employees.

li-ti-gious [li tījəss] adj. 1: of, relating to, or characterized by litigation 2: tending to engage in lawsuits. From the Latin, litigare, to quarrel.

SS&R has the expertise to help you avoid many costly conflicts with advance planning. Unfortunately, some lawsuits are unavoidable. In those cases we stand ready to explore more cost-effective alternatives to litigation with you such as arbitration or mediation.

About the author: Barry Rothman specializes in business and transactional law with particular expertise in corporations, employment, franchises, real estate and intellectual property.



SS&R Welcomes Matthew D. Macy

In September, the litigation team welcomed a new associate, Matthew D. Macy. Having received his J.D. in 1997 from the esteemed Emory School of Law in Atlanta, Matt is licensed to practice in both Georgia and Colorado. He is a Board Member of the Colorado Bar Association Young Lawyers Division Executive Committee and is the Co-Editor of that group's column in the CBA's monthly publication *The Colorado Lawyer*. Matt specializes in litigation involving employment matters, officer and director liability, trade secrets, unfair competition, complex litigation, contract and commercial matters, insurance defense and real property.

Matt's ambition apparently extends beyond building his practice. Not to be upstaged by the boss's family expansion in September, Matt, his wife, Deborah, and 4-year-old daughter, Natalie, welcomed Nolan Matthew Macy on September 7, 2003. Daddy's boy weighed in at 6 lbs/15.1 oz and was 20 inches long. Congratulations!