

Legal NEWSLETTER

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SEMINAR**



ATTORNEY RICK FLUGAUR HAS RETIRED

Congratulations to Attorney Rick Flugaur on retiring from Anderson O'Brien, LLP!

Rick joined the law firm in 1987 and became a partner in 1993. Rick served as a co-managing partner for the firm from 2011 to 2020. Rick focused his legal practice in the areas of business law, estate planning and commercial real estate transactions. Rick grew up working in a family business and enjoyed advising families and business owners with their legal matters and estate planning.

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ANDERSON O'BRIEN LLP

IF A TREE FALLS IN YOUR WOODS....

By Attorney Brent Jacobson

When most people look at trees, legal liability is unlikely the first thing that comes to mind. You may enjoy the shade they provide in the summer and their array of fall colors. However, you should also be on the lookout for liability, particularly for those trees close to your property line.

By way of example, imagine a mid-summer storm comes through sending the large, beautiful maple tree you have enjoyed over the years through your neighbor's roof and into her living room. In this scenario, normal negligence law should apply. In most cases, your neighbor's homeowner's insurance company will be responsible for the loss. However, if you knew or should have known of any pre-existing issues to the tree that made it more susceptible to collapse, you may be responsible. In this case, the homeowner's insurance company could seek to recoup its losses from you through what is called subrogation.

For example, let us assume the tree is dead or dying from insect infestation that has weakened its stability. In this situation you may be liable to repay the insurance company who satisfied the damage claim, particularly if the deterioration of the tree was readily apparent. On the other hand, if the tree was perfectly healthy or its problems were not apparent, it is unlikely that you would be responsible.

In either case, you would want to turn any claim for subrogation over to your insurance company for a defense and coverage. Whether your insurance company would provide a defense and coverage would depend on the terms of your own policy. Insurance policies, as one may suspect, have many exclusions and exceptions to coverage.



Another common issue that arises from trees on property lines concerns encroachment. Perhaps you have grown annoyed from the untrimmed tree that has partially crossed onto your property and obstructed your view or yard space. While a brief consultation with your neighbor may lead to a quick resolution, you are permitted to prune the encroaching portions of the tree. Of course, hiring a professional is recommended to guard against causing damage to the rest of the tree. You should also have confidence in the location of your property line to avoid creating your own issues of trespass and property damage should you remove too much of the tree.

Finally, there are statutory prohibitions on cutting certain trees along municipal streets and highways. In such cases, prior consultation with local authorities is recommended. Wis. Stat. § 86.03

Be sure to read through your home insurance policy carefully. If you have concerns about trees on your property we recommend having an arborist inspect them. ♦

Injured? Don't be a victim twice.

COMMERCIAL VS. RESIDENTIAL LEASES

By Attorney Steven Thompson

Most individuals must navigate a residential lease at some point in their lives – typically for an apartment to live in before potentially purchasing a home. In contrast, the majority of people will never need to negotiate or enter into a commercial lease – used for renting space to run a business. For those who do, it is important to understand the differences between the types of leases. On the other hand, a business owner who has become familiar with commercial leases and then decides to invest in and rent out residential property should bear in mind the special rules for residential leases to avoid a costly mistake.



All states have some differences between laws governing residential and commercial leases based on the public policy position. While commercial tenants are presumed to be savvy parties operating a business and capable of negotiating and bargaining on an even playing field with their landlord, the average residential renter is not experienced and vulnerable to being taken advantage of by better positioned landlords. After all, renters tend to be younger and in a worse position financially than someone who needs to rent a space to operate their privately owned business. A commercial tenant is viewed as another equal player in the economic marketplace who is capable of, and therefore responsible for, the consequences of any contract they choose to enter into.

Some of the major rules applying to residential leases in Wisconsin:

- Requirement to provide a check-in sheet at the start of a lease on which the tenant can make notes of any conditions existing on the premises
- Requirement that leases must contain specific language notifying tenants of certain rights of

domestic abuse victims

- Required special notice procedures to remind tenants of deadlines related to automatic lease renewals
- Minimum habitability standards that are generally waivable for commercial leases but required in residential leases
- Certain provisions, when included in residential leases, make the lease void and unenforceable. The ten provisions listed act as a sort of “guard rail” on the terms of residential leases keeping certain one-sided terms from being imposed on any renters in the state. The prohibition on such terms are not universal, and it is important to review any form leases obtained that are not Wisconsin specific for inclusion of these terms.
- Strict rules on the receipt of, accounting for, and return of security deposits
- The requirement to highlight and separate out certain terms as “NONSTANDARD” making them easier for tenants to see

Certain municipalities also have local ordinances imposing additional requirements. It is important to review any local laws that may provide further restrictions on residential leases.

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Lawyers where you live.

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(continued from front page), Rick Flugaur Retirement...

Rick received his Bachelor of Science degree in accounting in 1984 from University of Wisconsin – Stevens Point, graduating with honors. He is a 1987 graduate of the University of Wisconsin Law School and is also a Certified Public Accountant.

Rick is a member of the State Bar of Wisconsin and the Wisconsin Institute of Certified Public Accountants. His community involvement included the Portage County Business Council (President and Board Member), United Way of Portage County (President and Board Member), the Community Foundation of Central Wisconsin (President and Board Member), Stevens Point Area YMCA Foundation (President and Board Member), St. Michael's Foundation (President and Board Member) and the Pacelli Educational Foundation (Board Member). Rick also served as Corporate Counsel and as a member of the Board of Directors for the University of Wisconsin – Stevens Point Foundation from 2004 to 2015.

In 2009 he received the President's Award from the Portage County Business Council, an award given by the Business Council to a community member for their contribution in making the community a great place to live, work, play and pray. In 2015 he was awarded the Quality of Leadership award by the St. Michael's Foundation, an award given by the Foundation in recognition of a leader who has made a significant contribution to enhancing the quality of life for citizens in Portage County and the surrounding region.

Rick and his wife, Lesa, have three children, Ryan, Lindsey and Troy. In his retirement, Rick is looking forward to traveling with Lesa and spending more time with their children and four grandchildren. ♦

Best Wishes Rick!



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(continued from prior page), Leases...

- Commercial leases are generally longer. Typical residential leases are either month-to-month or annual. For commercial leases, three to five years with options to review for longer is more standard.

- Commercial leases more commonly involve the tenant making significant alterations to the property. It is rare for residential tenants to take out walls, install new equipment, etc. The responsibility for and ownership of these changes should be defined in the lease.

- Commercial leases tend to have the tenant take on more responsibility for maintaining the property and paying ancillary costs, like property taxes. A common subset of commercial lease is the "triple-net" lease, where, in addition to rent, the commercial tenant pays all of the property taxes, insurance and maintenance costs. Residential tenants pay rent and often pay the cost of utilities, but rarely are asked to pay for property taxes, maintenance or insurance costs.

For renters entering into a commercial lease for the first time, understanding the protections they may have benefited from without knowing about it in the course of their residential tenancies is important to fully review and potentially negotiate their commercial leases, where such protections do not apply. No one should ever sign a contract, like a lease, without carefully reading it first. Commercial tenants are exposed to the possibility of terms so burdensome the legislature banned them in the residential setting and thus need to review the lease carefully. For first-time landlords of residential properties, keeping these special rules in mind may be helpful in avoiding a costly mistake. Terms they may have grown accustomed to as "typical" in the commercial setting cannot just be inserted into a residential lease.

In conclusion, when entering into a commercial or residential lease for the first time you should be aware of the laws and rules in your state and local municipality. Please contact one of our experienced real estate attorneys if you have questions. ♦