KLEHR | HARRISON | HARVEY | BRANZBURG LLP

Letters of Intent

May 20, 2014

Gregory G. Gosfield, Esquire Real Estate and Finance 1835 Market Street Philadelphia, PA 19103 Tel.: 215-569-4164 Email: <u>GGosfield@Klehr.com</u> Paige M. Willan Litigation 1835 Market Street Philadelphia, PA 19103 Tel: 215.569-4283 Email: PWillan@klehr.com

These materials were used in connection with a live presentation and CLE seminar. They are for informational purposes only and are not intended to be legal advice. For legal advice on a particular matter, please contact one of our attorneys.

THE STRUCTURE AND USE OF LETTERS OF INTENT AS PRENEGOTIATION CONTRACTS FOR PROSPECTIVE REAL ESTATE TRANSACTIONS

Gregory G. Gosfield"

Editorst Synopsis: This Article distinguishes the elements, antecedents, and structured integration of ietters of intent. The Article examines the structure of the letter of intent, traces the historical roots of contract law to focus on concepts used to interpret contractual effect, focuses on negotiations, performance, and remedies associated with letters of intent, and finally analyzes common provisions of letters of intent. Overall, the Article aims to improve the usefulness of leiters of intent.

I.	INTRODUCTION: THE RULES OF ENGAGEMENT	100
II.	CHOOSING THE PURPOSE	105
	A. Agreement ofInterest	106
	B. Contract to Negotiate	107
	C. Agreement Subject to Written Contract	113
	D. Contract for Settlement	I 14
III.	A SMATTERING OF CONTRACT LAW H!STORY	115
	A. Roman Giants: The Rise of the Roman Empire (55	
	B.C.) to the Fall of the Roman Empire (450 A.D.)	. 115
	B. Invasions and Ignorance: From Anglo-Saxon Con-	
	quest (450 A.D.) to Norman Conquest (1150 A.D.).	. 117
	C. Common Law Emerges: From the King's Court	
	Cases (1150 A.D.) to The Enlightenment (1750)	. 121
	D. Contract Law Matures: From the Enlightenment	
	(1750 A.D.) to the Present	125
IV.	Is THERE A CONTRACT, A DUTY, ORA LIABILITY?	129
	A. Intent	130
	B. Essential Terms	136
	C. Consideration and Promissory Estoppel	137
	D. Statute of Frauds	139
	E. Remedies	141
	F. Damages .	142
	1. Expectation Damages	142
	2. Reliance Damages .	142
	3. Restitution Damages	143
V.	SEPARATING BINDING AND NONBINDING PROVISIONS	.144
	A. Binding Provisions	145

38 REAL PROPERTY, PROBATE AND TRUST JOURNAL

	1. Intent	145
	2. Good Faith	145
	3. Disclaimer of Exclusivity	151
	4. Disclaimer, Release, Indemnification, Assum	nption,
	arid Waiver	153
	5. Limitation of Liability	157
	6. Confidentiality	157
	7. Approval and Authority	160
	8. Expenses	161
	9. Access	162
	10. Miscellaneous Provisions	164
	B. Nonbinding Provisions	165
VI.	CONCLUSION	166

For complete content please contact Gregory Gosfield 215-569-4976 | ggosfield@klehr.com