

"What Is a Tenant Estoppel Certificate and Why Are They Used?"

The value in commercial real estate is oftentimes created by the terms and conditions of the leases under which tenants are occupying the property. As a result, a buyer or lender of real property in connection with a sale or refinance transaction will typically require the tenants of the property to execute a tenant estoppel certificate. This confirms the status of existing leases for the purpose of providing additional security for the financial operation and cash flow of the property.

The tenant estoppel certificate also provides buyers and lenders with an important legal tool. A tenant will be "estopped," or prevented, from making future claims against the owner of the real estate when such claims are contrary to statements made in the tenant estoppel certificate. For example, if a tenant represents in a tenant estoppel certificate that there are no defaults by a landlord under a particular lease, the tenant estoppel certificate can be used to defend against a later attempt by the tenant claiming that the landlord failed to make a repair to the premises, or is otherwise in default under the lease, prior to the date of the tenant estoppel certificate.

At a minimum, a tenant estoppel certificate should contain a statement by the tenant with respect to the following lease terms:

- The identity of the relevant parties and location of the leased premises;
- The rent commencement and expiration dates;
- The amount of rent payable by the tenant and whether any prepaid rent or security deposits have been paid;
- The terms of any options to extend the term of the lease or expand the premises; and
- Whether there are any defaults by the landlord or tenant.

From a practical perspective, it is important for all parties involved in a sale or refinancing transaction to start the tenant estoppel process early to prevent delays in closing that may be caused by unexpected statements made by tenants

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in the estoppel certificate.

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