

Estoppel Certificates: Beware Before You Sign

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What is the estoppel certificate?

The estoppel certificate requires a party to confirm in writing the status of a lease. The certificate will typically ask the recipient to confirm the term of the lease, that there are no defaults under the lease, the rent, any work required to still be completed, whether a renewal option has been exercised, and other material information. The certificate often attaches the lease and asks for confirmation that the lease is unmodified and in full force and effect.

Typically a lease gives a landlord the right to send an estoppel certificate to its tenant. While less common, a lease may provide for a certificate to be sent by a tenant to a landlord.

If a party wishes to request an estoppel certificate the lease must so provide.

The lease will state the time for a response to the certificate. Failure to timely respond will likely be a default under the lease.

The certificate requires careful attention by the recipient. The answers have consequences for the landlord, the tenant and third parties.

Why is an estoppel certificate requested?

A landlord may wish to furnish the certificate to prospective purchasers of the property and to lenders to confirm the terms of the lease and its status. A tenant might wish to request the certificate from the landlord for the benefit of such other parties as a leasehold mortgagee, lender, assignee or the purchaser of assets of its business.

Third parties will rely on the certificate in deciding whether to proceed with a transaction, such as a loan or purchase of the business or the property. The timely completion of the certificate is important to the requesting party because a failure of the recipient to respond may interfere with a business opportunity of the requesting party.

What are the consequences of the response to the estoppel certificate?

The responding party will likely be bound by its answers and precluded from later asserting contrary facts and claims, such as a default existing under the lease at the time of response but not identified in the certificate. Thus the response to the certificate should set forth appropriate exceptions or material omissions to the statements that the recipient is asked to confirm in the certificate. For example, when the certificate asks for confirmation of the rent under the lease but omits to state a rent credit the recipient should set forth the rent credit in its response.

The lease will usually set forth the scope of the information to be covered by the estoppel certificate. If the estoppel certificate asks the responding party to certify to facts that are not required under the terms of the lease, a party would be wise to object. The certificate should not be used to expand or change the terms of the lease.

If a party cannot complete the certificate without qualification it sometimes makes sense to discuss this with the other party prior to responding assuming there is still time to respond under the terms of the lease. This may enable a response in a way that protects the answering party but does not interfere with the business opportunity of the other party, such as obtaining financing.

In the end a party should prepare a response to the certificate that is factually correct and identifies exceptions and qualifications that exist at the time the party is asked to answer the certificate. Any required certificate should be timely completed.

For more information on issues and developments in this area, please feel free to contact [Gordon J. Golum](#) at 732.855.6056 or ggolum@wilentz.com.

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