Licenses Versus Leases

Are swap meet vendors eligible for relocation benefits?

BY MICHAEL F. YOSHIBA, ESQ.

Successful owners of commercial property are always seeking new ways to maximize the return on their investment. These property owners typically lease their properties to tenants for either an agreed term or on a month-to-month basis. Relocation assistance regulations contemplate these situations in determining eligibility for lawful tenants occupying property.

A few years ago, an owner of a commercial parking lot near the Los Angeles downtown commercial business district sought to generate additional income over the weekends when his parking lot was unused. For a fee, he began allowing individuals to use the parking lot during this time to hold their garage sales. This use-concept became so successful that the parking lot became fully occupied every weekend and holiday. Yet, instead of individuals holding garage sales, the entire lot was utilized by small commercial businesses as a satellite swap meet location for their retail stores.

When the local school district ("Agency") came along and sought to acquire the parking lot for a new school project, the legal question arose: Are the weekend swap meet vendors entitled to relocation assistance benefits from the Agency?

Possession of Property

Documentation of the relationships between the property owner and the vendors was the key to answering the question. Swap meet vendors on the property may or may not be legally eligible for relocation assistance benefits as "displaced persons" under California Code of Regulations. Eligibility depended upon whether the vendor's presence on the property was lawful by a right to possession, by a permit or license, or through some other agreement with the property owner.

For the purposes of the Agency's Relocation Assistance Program, "displaced persons" is defined as any person, including a business, who was present on the property at the time of the initiation of negotiations and who moves from real property (or who moves his personal property from real property) as a result of a written notice of intent to acquire such real property. A causal connection between the property acquisition and the displacement doesn't necessarily warrant relocation benefits. Businesses who demonstrated that they were in lawful possession of the property—through a written agreement, a lease, or in some instances by evidence of an informal agreement—were entitled to receive relocation benefits. In this instance, lawful possession of property can be established by a written agreement between a landlord and tenant. The landlord-tenant relationship doesn't commence until the tenant has a present right to possession, which depends upon the intent of the parties through the terms of the contract.

The right to possession of the property is considered transferred between landlord and tenant if the agreement specifies that the tenant will assume a physical relationship to the specific property and where they have the power to exclude others from the identified property. If the tenant can prove the existence of a property right, a landlord must then use the unlawful detainer process to pursue an eviction of the tenant from the property.

If the swap meet vendors can produce a written instrument establishing a landlord-tenant relationship, they are eligible to receive relocation assistance benefits. In some instances, landlord-tenant relationships can be demonstrated without a formal written instrument. However, there must be supporting evidence substantiating a right to possession. At a minimum, the tenant must produce documents such as receipts and correspondence with the property owner.

Alternatively, vendors on the property might have a relationship with the property owner that amounts to less than a landlord-tenant relationship. The vendors may be using the property as guests, licensees, invitees or permittees of the owner. If the agreement between the vendor and the owner confers no property rights in the premises to the vendor, then the use of the specific property by the vendor is less than an exclusive use, and can be cancelled by the owner at any time.

A license or permit is much different than a lease because they do not require a property owner to use the unlawful detainer process to remove persons from the property. Guests, licensees, invitees, and permittees are not afforded the legal protections of the unlawful detainer process because there is no right to possession of the property. Without the right to possession and occupancy of the property by the vendors, they are not displaced persons.

In this instance, the Agency discovered that the handwritten agreements between the vendors and the property owner didn't contain any language or terms that could be considered the equivalent of a lease or rental agreement. The vendors were licensees and not displaced persons eligible for relocation assistance benefits.

The same legal analyses should apply today whenever an agency seeks to acquire property that is occupied by other short-term or temporary occupants such as a farmer's market, pop-up restaurant or food catering truck. ✪

References:

42 U.S.C. 4601 et seq., "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended."

California Code of Regulations, Title 25, Chapter 6, Subchapter 1, Article 1, Sections 6003, 6008 and 6034.

Kong v. City of Hawaiian Gardens Redevelopment Agency (2002) 101 Cal. App. 4th 1317.

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