

OWENS DAVIES

ATTORNEYS AT LAW

A Legacy of Wisdom Shared

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What to Consider Before Signing a Lease

When you're a tenant the lease presented to you typically has been prepared in your landlord's favor.

You have to weigh the cost of proper review and negotiation against the risk of accepting less than desirable terms.

Even when the value of the lease is "small" (e.g. the space, rent, and/or term are limited), you can minimize risk by focusing on the lease provisions most likely to have an impact.



- **Tenant Improvements and Commencement Date.** Should cover exact scope of required improvements, expected date of completion, relationship of completion to lease commencement, and consequences if completion is delayed.
- **Common Areas.** In a multi-tenant property, be sure common area expenses, including fees for management and overhead, do not include items that shouldn't be shared.
- **As-Is.** A typical triple net lease requires the tenant to maintain and repair everything but the roof, foundation and structural portions. Unless you've conducted a thorough inspection (including mechanical, electrical and plumbing systems), it is extremely risky to accept the premises "as-is."
- **Option to Renew.** If rent at renewal will be "as mutually agreed," with no alternatives identified, the tenant may be left with no effective right to renew.
- **Assignment/Subletting.** Unreasonable restrictions, rather than simply requiring a new tenant of equal quality, can prevent a tenant from dealing with changed conditions.
- **Landlord's Consent.** Provisions giving the landlord, at its sole discretion, the right to make decisions, withhold approval, etc., are inadvisable without accompanying language requiring both parties to act reasonably and in good faith.

"If a rental amount cannot be agreed upon... the tenant may be left with no effective right to renew."

With "small leases," focusing on provisions most likely to have an impact may be the most economical way to minimize risk.

For more information on lease transactions, either as a tenant or a landlord, contact Kirk Veis at kveis@owensdavies.com

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Matt Edwards

Skilled Strategist and Litigator

Openings...Legal Moves...

Strategy...Rounds. These make up the language of law...and the language of chess.



Matt Edwards

Law and chess are two areas where Owens Davies attorney Matthew (Matt) B. Edwards is

master. A chess master, and twice WA State Chess Champion, Matt is also a skilled litigator who can size up the relative strength and resources of his opponents and put his clients in a "winning position."

Strategy in chess and law is similar. "Someone is on the other side who wants to achieve their aims and block your moves," explains Matt.

Education

Matt graduated cum laude with both a BA in Honors History and BA in Latin from the University of Washington in 1981. He received a Masters in Medieval Law from Columbia University in 1982, with a master's thesis that required analyzing Papal papers, in their original Latin form, to gain insight into Canon Law during the dark ages. Matt spent the mid-80's working for DSHS as a welfare worker, and then returned to the U of W in 1988 to get his law degree. He finished in the top 5% of his class.

Legal Experience

Next year Matt will celebrate his 20th anniversary working for Owens Davies as a civil litigation attorney. Prior to that he clerked for Chief Justice Keith Callow of the WA State Supreme Court from 1988-89 and began life in the private sector in Seattle with Karr Tuttle Campbell.

Drawing on his strategic aptitudes, Matt has a substantial appellate practice and has represented numerous clients before the WA State Supreme Court and the WA State Court of Appeals. Perhaps because his father was an insurance underwriter, Matt is uniquely adept at understanding insurance policies and laws applicable to them. Much of his time is spent on civil litigation, insurance coverage disputes, commercial disputes, governmental related disputes, trusts and estate litigation.

Patience is a Virtue

Not surprisingly Matt's a patient person. This is an essential characteristic when chess games last six to eight hours and appellate cases can take years to complete. Patience also comes in handy as the father of four children, ages 22, 19, 14, and 11. His tenacity also aids him in that role as well as in practicing law. "I hold tenaciously to a position and simply won't give up," Matt shares. Too bad for his kids.

Matthew B. Edwards
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Communication and Planning Key in Successful Business Succession

The odds are stacked against family businesses as they try to pass on their economic achievements to the next generation.

Statistics say on average only 18% survive. With transfer to the third generation, the numbers dramatically drop to only 4% remaining intact.

What are some of the top roadblocks?

- Lack of involvement from an early age
- Kids don't want to be in the business
- Not truly passing on the control, leaving kids in a vacuum when the patriarch passes

Business succession can be a difficult subject to discuss. Owens Davies attorneys help families talk about tough issues that can undermine success. They then draw on their extensive experience and knowledge of the law, to identify and implement the best legal approaches for the family's desired outcomes.

Other related issues commonly surface during conversations about business succession. Already familiar with the family's situation and wishes, Owens Davies can also seamlessly provide services related to estate planning, probate and estate administration.

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CHANGES IN LAND USE LAW

Critical Areas Ordinance Gets More Restrictive



Photo by Curtis Wambach, PE Consultants

Protection of Mazama Pocket Gophers recently reduced a property owner's available developable land in the Tumwater area from 14.2 acres to about 3 acres.

Thurston County is nearing completion of its critical areas ordinance. It is anticipated nearly every buffer, setback and restriction will become broader with the stated goal of providing more environmental protection.

For individual property owners, the impacts may reduce the ability to develop property as many have previously planned. Protecting Mazama pocket gophers, oak trees and other features will reduce the area available for development.

In a recent case in the Tumwater area, the gopher protection area involved nearly 11 acres out of a 14.2 acre parcel. Although the gophers have been on the prairie areas for hundreds of years, protection of the declining population has become more of an issue as properties have developed.

New Impact Fees Considered

Thurston County is considering the imposition of impact fees for school, fire and traffic impacts. All jurisdictions require dedication of land or payment to mitigate impacts of projects. Impact fees are collected to guarantee facilities can be funded when needed and reduce the impacts of new construction.

Current Single Residence Impact and SEPA-Based Fees

| | Olympia | Tumwater | Lacey | Thurston Cty |
|----------------|---------|----------|--------|--------------|
| Parks | \$4,012 | \$3,726 | - 0 - | ? |
| Fire | - 0 - | - 0 - | - 0 - | ? |
| Transportation | \$3,270 | \$1,656 | Varies | ? |

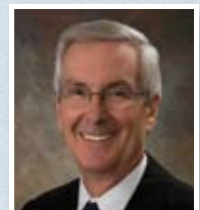
| | N. Thurston SD | Olympia SD | Tumwater SD |
|-------|----------------|------------|-------------|
| Parks | \$3,134 | \$2,735 | \$3,872 |

Septic Reports Now Required

As of September 1, Thurston County Environmental Health requires a sewage system inspection when a property is sold. The purpose for the new permit is to ensure septic systems are properly functioning.

Now required at sale are a pumper's report, an application, a \$170 fee and an inspection report. Of note, the report includes a new condition requiring a drawing to be on file, something many of the old septic systems don't have.

For more information on land use issues, contact Mick Phillips, rphillips@owensdavies.com



Owens Davies Sponsors Second Annual EDC Real Estate Forum



Showcasing Thurston County's commercial and industrial properties, Owens Davies has partnered with the

Thurston Economic Development Council (EDC) to help sponsor Real Estate Forum 2010: Poised for Growth on September 22. Additional event highlights include expert panelists, a roll out of the 3rd quarter Thurston Economic Vitality

Index results and opportunities for networking.

Creative, strategic partnerships with corporate leaders like Owens Davies are vital to the success of the EDC and community.

Our Areas of Expertise

Real Estate –
Transactions & Development

Real Estate Disputes

Business Transactions,
Corporate & Taxation

Municipal Law

Estate Planning & Probate

Personal Injury & Wrongful Death

Appeals

Employment Law

Litigation & Business Disputes

Environmental Remediation

Land Use & Environmental Law

Insurance Coverage

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VENUE CONSIDERATION

Where You Sign Your Contract Matters

Dan Taylor, the son of Owens Davies attorney Don Taylor, was a gifted football player drafted by the Dallas Cowboys in the 1980s.



Gil Brandt, vice president of player personnel for the Cowboys, came to Olympia to negotiate the contract. The

negotiations and contract signing occurred in Don's law office in Olympia.

Unfortunately, Dan was injured in training camp. When the Cowboys rejected his claim, a law suit was filed in Thurston County.

The Cowboys resisted **jurisdiction** and **venue**, wanting the case heard in Dallas. However Mr. Brandt's presence in Olympia during negotiations and signing in Thurston County were enough for a

Thurston County judge to rule that both jurisdiction and venue were proper.

This gave Dan the home court advantage. It eliminated travel related issues and capitalized on his legal team's familiarity with the local courts.

Where you sign your contract matters.

Jurisdiction refers to the scope of a type of court -- district, state, federal, appeals, etc -- to control the issues being considered and determine their outcome.

Venue is the geographic location where the suit may be filed and heard. In Washington, venue is primarily determined by law, as well as by some court rules. Contracts sometimes specify venue with a "**forum selection clause.**" Courts typically enforce such provisions even if contrary to state law or rules.

In the absence of an agreement, the law requires suits be filed where the defendant or one of the defendants may reside. If the defendant is a corporation, the party bringing suit may choose from a broad range of possible venues, including where the corporation does business or has an office, where a corporate person to be served resides, where the agreement was made or where the wrongdoing was committed.

In contracts pay close attention to provisions, or lack thereof, related to venue. When not spelled out, the location of negotiations and/or filing may determine the venue for any dispute.

For more information on venue considerations, contact Michael Mayberry at mmayberry@owensdavies.com or Don Taylor at 360.943.8320