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# COMMERCIAL LEASE NEWSLETTER

## PAROL EVIDENCE TO ADDRESS AMBIGUITIES IN THE LEASE

### PAROL EVIDENCE ALLOWED IN THE EVENT OF AMBIGUITIES IN THE LEASE

In the event of an ambiguity in the lease itself, the Court may hear oral testimony (parol evidence) to allow the Court to make a correct determination of the true intent of the parties. If for some reason the intent is not properly expressed in the written document, the Court would need to look at the entire agreement and where necessary consider parol evidence. Landis v. Mears 329 So 2d. 323 (2DCA 1976). Florida Law is clear that the Court cannot accept extrinsic evidence simply to rewrite a written document for the parties Peach State Roofing, Inc. v. 2224 South Trail Corp. 3 So. 3d 442 (2DCA 2009). This is notwithstanding the fact that there may be a situation in which one of the parties has entered into a rather one sided agreement (barring the defense of unconscionability or some other defense). Notwithstanding the underlying ruling that a court generally cannot rewrite a contract for party, the Court can, in situations in which there is ambiguity, accept parol evidence to reflect the intent of the parties. Dynamic Homes, Inc. v. Rogers 331 So. 2d. 326 (4DCA 1976).

**LATENT AMBIGUITIES V. PATENT AMBIGUITIES**. The difference between a "patent" ambiguity and a "latent" ambiguity is summarized in Landis v. Mears 329 So 2d. 323 (2DCA 1976) as follows:

*"The rule differentiating between patent and latent ambiguities in respect to admitting parol evidence has been criticized and even discarded in a number of jurisdictions. See, 30 Am.Jur.2d, Evidence, § 1073. Still, Florida courts have adhered to the distinction and ordinarily allow parol evidence where there is a latent ambiguity and reject it where there is a patent ambiguity. Carson v. Palmer, 1939, 139 Fla. 570, 190 So. 720; Ace Electric Supply Co. v. Terra Nova Electric, Inc., Fla.App.1st 1973, 288 So.2d 544; City of Hollywood v. Zinkil, Fla.App.4th 1973, 283 So.2d 581. See also, City of St. Petersburg v. International Assoc. of Firefighters, Fla.App.2d 1975, 317 So.2d 788. The reasoning runs like this: A "latent" ambiguity exists where a document is rendered*

*ambiguous by some collateral matter. In such instances it is essential for the court to hear that matter to render a proper interpretation.*

*Where, however, the ambiguity is patent, to admit evidence would be improper since it would, in effect, allow the court to rewrite the contract for the parties by supplying information the parties themselves did not choose to include.*

*We recognize the classic distinction between patent and latent ambiguities as a basis of the court determining whether or not to hear parol evidence; nevertheless, that distinction is not relevant here since the court was only interested in determining the capacity of the parties who entered the agreement rather than in varying or supplying any terms to the agreement. This case is controlled by the principle that where, as here, there is an ambiguity on the face of a contract as to the capacity of parties and their relationship with one another and the surrounding circumstances when they entered into the agreement, the court is proper in receiving parol evidence."*

It is always a less than a clear situation to determine if parol evidence could be allowable and whether the ambiguities are "latent" or "patent". The overarching theme on these concepts in regard to proper lease execution is to have the commercial lease properly prepared and executed using the following format.

1. The entity or business in which the lease is in should be properly described in the lease.

2. The signature block should have a specific and identifiable designation indicating that is being executed by an authorized representative of the company.

3. An authorized representative of the company should in fact sign this lease in that person's representative capacity.

4. The representative capacity should be clearly stated in the lease.

5. The lease should have two specific witnesses who should witness the signature of the representative of the company and if possibly, have the signature notarized with the person signing it being specifically designated as having signed the document and with their signature acknowledged being specifically identified utilizing a standard notarization format and paragraph as well as the fact that as a person specific capacity being contained in such notary acknowledgment. The same holds true for guarantees, generally in a corporate guaranty we are looking at an individual signing the document guaranteeing the interest of a business entity, but on certain occasions, an additional business entity can in of itself be guaranteeing the debt of an affiliated business entity. Again, the same proper procedure should be followed for such execution on the guaranty