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A LOOK AT SETTLEMENT STIPULATIONS

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***Hypothetical**

*Lovely Lakes Apartments is a mid-luxury residential apartment community located in South Florida. It has all of the amenities residents are looking for in an apartment community, including multiple pools, a state-of-the-art fitness center and business center, lakes, basketball and tennis courts and a playground. Lovely Lakes' occupancy rate typically averages between 96%-99%. However, unfortunately, the economy has taken a turn for the worse, and many of Lovely Lakes' long standing and good paying residents have been struggling to pay their monthly rent over the past year. As a result, Lovely Lakes has been filing increased evictions, its occupancy rate has dipped to 85% over the past year, and Lovely Lakes continues to struggle in collecting the monthly rent owed by its residents. The Property Manager recently met with her Regional Property Manager to discuss different ways to increase her occupancy rate and to get residents off of her delinquency report.

What is Lovely Lakes going to do?

One of the many ideas that Lovely Lakes came up with was to consult with its attorneys to discuss how entering into Settlement Stipulations may benefit the community. Settlement Stipulations are a very useful and helpful tool available to landlords and tenants during the eviction process, and many clients do not fully understand what settlement stipulations are, how they work and the advantages and disadvantages associated therewith.

What is a settlement stipulation and how does it work?

Specifically relating to residential landlord-tenant eviction actions for non-payment of rent, a settlement stipulation contains the following essential elements:

- (1) A settlement stipulation is a written agreement that is voluntarily entered into between a landlord and tenant fully resolving the pending eviction action for possession and memorializing the terms and conditions of such settlement between the parties;

- (2) Settlement stipulations allow the tenant to remain in possession of the premises while avoiding an eviction if the tenant fully complies with the stipulation's terms and scheduled payments discussed more fully below;
- (3) Stipulations provide the landlord with an opportunity to accept rent and all other monies due from the tenant during the pendency of an eviction when a landlord is otherwise prohibited from accepting monies from a tenant during an eviction without waiving the landlord's right to evict;
- (4) Stipulations allow the landlord to keep the resident in possession giving the resident an opportunity to fulfill the terms of his/her lease agreement instead of the landlord having a vacant unit; and
- (5) Filing settlement stipulations allows the Court to maintain jurisdiction over the parties and the eviction action so the Court may enforce the terms of the stipulation and enter a Final Judgment in favor of the landlord should the tenant breach any of the terms and payments under the stipulation.

What terms should be included in settlement stipulations?

In order to adequately protect the landlord, a typical settlement stipulation should include the following material terms and conditions:

- (1) A tenant will acknowledge the total amount of monies due and owing the landlord, including all of the past due rent, additional rent (e.g., late fees, NSF fees), attorney's fees and court costs.
- (2) The landlord and tenant will agree to a detailed payment plan specifying a payment schedule with an amount due and due date for each payment necessary for the tenant to become current on past due rent, attorney's fees and court costs.
- (3) If the tenant has deposited rent into the Court Registry, the tenant should agree that the rent deposited into the Court Registry will be released to the landlord so as to prevent unnecessary delays or court hearings to get rent money out of the Court Registry.
- (4) To further protect the landlord from having to file a subsequent eviction should the tenant fail to pay future rent payments that become due during the stipulation's payment schedule, the settlement stipulation should incorporate language stating that rent which accrues during the pendency of the settlement stipulation shall be paid in accordance with the terms of the lease agreement, and the Court shall have jurisdiction to enforce such future rental payments.
- (5) The settlement stipulation should reinforce that the terms of the lease agreement shall remain in full force and effect, but in the event of a conflict between the settlement

stipulation and the lease agreement, the terms of the settlement stipulation shall control.

- (6) Finally, the settlement stipulation should provide that in the event the tenant defaults by failing to pay the stipulated payments or rent which accrues during the pendency of the stipulation when due in accordance with the terms of the stipulation, the landlord shall be entitled to an immediate Final Judgment for Eviction without further notice or hearing upon the filing of an Affidavit of Nonpayment specifying the default.

What is the process with the Courts?

After Lovely Lakes and the tenant agree on all of the terms and conditions of the settlement stipulation, the settlement stipulation should be signed by both parties, and the landlord should make two copies of the stipulation, giving one copy to the tenant and place the other copy into the tenant file. The original settlement stipulation should then be mailed to our offices so that we may file the original stipulation with the Court along with a motion and proposed Order for the Court to approve the stipulation. Once the settlement stipulation is filed with the Court and the Court approves same, the Court will then maintain jurisdiction over the eviction case and the parties to enforce the terms and conditions of the settlement stipulation. It is very important that the settlement stipulation is filed with and approved by the Court because, if not, then the Court will not have jurisdiction to enforce the terms and conditions of the settlement stipulation, and, if the tenant were to breach the stipulation, the Court would have no jurisdiction or power to enter a Final Judgment at that time.

If the tenant complies with the terms of the settlement stipulation, then Lovely Lakes will have received all of the past due monies owed from the tenant, the eviction case will be dismissed and the tenant will remain in possession of the unit in accordance with the terms of the parties' lease agreement. If the tenant defaults under the settlement stipulation, then Lovely Lakes is not required to serve the tenant with any further notices or file a new eviction. Rather, Lovely Lakes will only need to advise our offices of the tenant's breach of the settlement stipulation, and we will immediately file the proper motion and affidavit of noncompliance in order to obtain a Final Judgment in favor of Lovely Lakes. The Court will then enter a Final Judgment for the landlord without further notice or hearing so that a writ of possession may then be issued and executed, and the premises may be lawfully restored to the landlord.

What are the benefits of settlement stipulations?

- As briefly mentioned above, settlement stipulations provide landlords with an opportunity to collect on monies that they normally would not otherwise receive or be entitled to collect from the tenant during an eviction because Fla. Stat. §83.56(5) provides that if a landlord accepts rent with actual knowledge of a tenant's noncompliance, then the landlord waives his right to evict. Thus, an eviction action must be dismissed by the Court if a landlord accepts any money whatsoever from a tenant during an eviction unless both parties enter into a settlement stipulation as set forth above.

- Settlement stipulations can assist in lowering delinquency rates and help to maintain occupancy rates by keeping the tenants in possession while giving both parties a chance to avoid an eviction.
- Settlement stipulations provide tenants with an opportunity to get caught up on their rent and back on their feet to fulfilling their lease term, and many tenants appreciate the good faith efforts of the landlord to work with them, which may lead to word-of-mouth referrals.
- Since settlement stipulations are under supervision of the Court, if the tenant were to breach the settlement stipulation, the landlord does not need to serve the tenant with any additional notices or start over with a new eviction and can simply file the appropriate motion with the Court to obtain a Final Judgment for Possession, thereby saving the landlord time and money.

What are the draw backs of settlement stipulations?

- Some tenants may make promises that they are unable to keep, so they will enter into a settlement stipulation knowing they may not be able to abide by the terms and conditions set forth in the agreement in order to buy some more time.
- In the event the tenant breaches the stipulation, it will take additional time (usually about 10-14 days) for the eviction to be completed since the landlord must go through the process of filing a breach of the settlement stipulation in order to obtain the Final Judgment for Possession.

Conclusion

Settlement stipulations offer a unique opportunity to landlords and tenants allowing the parties to agree to conditional terms and payment arrangements, which a Judge presiding over the eviction case cannot order upon either party since, without a settlement stipulation, the Judge's only power is to enter a Judgment in favor of the landlord evicting the tenant or to enter a Judgment in favor of the tenant dismissing the landlord's eviction action. Settlement stipulations are an extremely beneficial tool available to landlords to attempt to increase or sustain occupancy rates and decrease delinquency rates. Please refer to pages 43 and 44 of this [Legal Guide to Florida Property Management](#) to review a sample settlement stipulation. We hope that you find this information useful and educational, and, as always, please do not hesitate to contact us should you have any questions, concerns or require any assistance as it is our pleasure working with you.