

Elevating Form Over Substance in Commercial Leases

Article By:

Julie A. Schoepf

In a recent unanimous decision, *Game Place, L.L.C. v. Fredericksburg 35, LLC*, 295 Va. 396 (2018), the Virginia Supreme Court held a 15-year commercial lease unenforceable because it was not executed in accordance with Virginia common law formalities. In Virginia, any commercial lease for a term of five years or more must be in the form of a deed as set forth in the Statute of Conveyances (Virginia Code § 55-2) and must include either a seal or a seal substitute (scroll by way of seal, imprint, stamp, the use of “this deed” or “this indenture” in the body of the writing, etc.). In *Game Place*, the tenant sought to extinguish a 15-year lease prior to the expiration of the term and the landlord brought suit for unpaid rent that accrued after the tenant vacated the premises. The trial court ruled in the landlord’s favor honoring the equitable maxim of substance over form and required the tenant pay rent for the remainder of the lease term. On appeal, the tenant argued that the lease was unenforceable because it was not signed under seal and therefore did not meet the requirements of the Statute of Conveyances. The Virginia Supreme Court sided with the tenant, drawing a bright line rule that all leases must meet exactly the common law requirements of a deed. In overruling the trial court, the Virginia Supreme Court held that the non-compliant lease created a month- to-month periodic tenancy under which the tenant was able to repudiate the lease at any time. The judgment against the tenant was reversed and the landlord was no longer able to collect rent from the tenant for the remainder of the 15-year lease term.

As a result of the *Game Place* case, we recommend property owners, tenants, lenders and borrowers carefully review each and every commercial lease executed in Virginia to ensure that it complies with the requirements set forth in the Virginia Statute of Conveyances. An amendment to an existing lease to achieve compliance may be possible following review.

© 2025 Dinsmore & Shohl LLP. All rights reserved.

National Law Review, Volume VIII, Number 234

Source URL: <https://natlawreview.com/article/elevating-form-over-substance-commercial-leases>