

# MARC JACOB, ESQ.

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THE CHOICE OF A LAWYER IS AN IMPORTANT DECISION AND SHOULD NOT BE BASED SOLELY UPON ADVERTISEMENTS.

## MARC JACOB, ESQ. Attorney And Counselor At Law Mediation Services

Fall 2010 #3

Concentrating in:

**Business and  
Real Estate Law**

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## Mediation Services Now Offered

I am pleased to announce that I am now a Missouri Supreme Court Rule 17-Approved Mediator.

Mediation is defined as “facilitated negotiation.” The mediator is a neutral third party who cannot impose a judgment, but rather helps the parties come to a resolution. Clients only settle if they like the negotiated outcome. Most often, mediation is a method to reach settlement after suit has already been filed, but parties may mediate prior to filing a lawsuit. Although client participation is usually voluntary, proposed revisions to Rule 17, if enacted, will make mediation mandatory for all Civil Court cases requesting in excess of \$25,000 in damages.

Mediation can last anywhere from one day to a full week, and clients split the cost of the mediator’s fee. The mediator focuses on the parties’ underlying “interests” rather than on their positions or bottom

lines. This allows clients to reach a true win-win outcome that is unachievable in a lawsuit.

Some of benefits of mediation include:

- Reduced costs through fee splitting;
- Quick resolution and resultant reduced costs;
- Client control over the outcome; and
- Preservation of the personal and business relationships of the parties.

I completed a three-day training offered by the University of Missouri, Columbia, which is one of the best mediation programs in the nation. I look forward to helping facilitate fruitful negotiations for you and your clients.

Wishing you all the best,

*Marc Jacob*

## Business

### Real Estate Brokerage

Real estate agents are in a tough spot. On one hand they have a duty to their clients and, on the other hand, they only get paid if the sale closes, whether or not it is in their clients' best interests. Throw into the mix that it is their supervising broker who is entitled to the commission, and who holds their license, and you have quite a lot to juggle.

These competing pressures sometimes result in agents getting into situations where it seems they should be entitled to a commission, but the law refuses them. The recent case of *Deer Run Properties, LLC v. Keys to the Lake Lodging, Co., LLC* (2010 WL 1971663) illustrates the point.

In that case, the Missouri Court of Appeals for the Southern District ruled that the Buyer's agent was not entitled to a commission from the Seller even if the agent was the "procuring cause" of the sale.

**"...brokerages should have legal counsel they and their agents can turn to for occasional questions..."**

The court cited previous court decisions indicating that the broker or agent had to prove **both** that there was a signed agreement **and** that the broker or agent was the procuring cause of the sale. In this case, there was no signed brokerage agreement.

To avoid this scenario and the many other occupational hazards faced by real estate agents, it is important that agents at larger brokerages feel comfortable approaching their company's legal counsel to gain clarity on actions they take in the field.

Similarly, smaller brokerages should have legal counsel they and their agents can turn to for occasional questions. This will help them avoid violating Real Estate Commission rules and losing out on commissions, which is especially important in a market as tough as this one!

## Real Estate

### Commercial Leasing - Tenants Beware!

Recently, several clients have had me review commercial leases for them. They are either starting new businesses or renewing an existing lease. The businesses include restaurants, sales offices, contractors, medical practices and many others.

It is important to remember that every commercial lease is different because, unlike in the residential market, standard commercial form contracts are not widely used in St. Louis. This is likely due to the fact that commercial deals are all very different.

**"...every commercial lease is different because...commercial deals are all very different."**

performance; others are relatively lenient. So when reviewing a commercial lease with your attorney, rather than asking if a term is "standard," you should feel comfortable asking if a term makes sense within the context of your particular deal.

Additionally, many terms are more negotiable than you might think. Negotiating terms, however, means that you must know their legal import. If you have commercial leasing in your future, I would be happy to review the lease on your behalf and advise you on effectively negotiating its terms.

Make sure you start early, though. The closer you get to your own deadlines, the less bargaining power you will have. Ideally, you will begin negotiating your commercial lease at least three to six months prior to renewal or taking possession. Although it can be done quicker, the more time you give your attorney, the more likely you are to end up with better terms.

I have reviewed commercial leases that are in excess of fifty pages and those that are barely five pages long. Some have hefty penalties for tenant non-