

# Rothfelder on Memorandums of Lease

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*The usual out of home industry legal practice is to record a memorandum of lease as opposed to the full lease in order not to disclose proprietary details to competitors or other landlords in a market. A Billboard Insider Reader asks "Is there potential for a lawsuit if a new owner acquires the property and wants to argue that not all elements or aspects of the lease were disclosed or made available to the new buyer?" Texas out of home attorney Richard Rothfelder says this:*



Richard Rothfelder, Partner, Rothfelder  
Falick

I've written on this topic many times, and litigated it on behalf of clients even more often. So, I can answer the reader's question pretty unequivocally: As long as the memorandum of lease is filed of record, and it contains enough information to put potential buyers on notice of the lessee's interest and duty to investigate further to learn more details, such a recorded memorandum of lease would be sufficient to bind these subsequent purchasers of the property and bind them to the lease terms.

My most recent detailed explanation on the recording of leases and memoranda of leases was published in the August 2, 2022 edition of Billboard Insider (<https://billboardinsider.com/rothfelder-on-unrecorded-leases-and-constructive-notice/>). By clicking on and reading that article, you'll see the interesting case of *SignAd vs BJZ*, where the purchaser of the land under the billboard was bound by the unrecorded lease and the right of first refusal in it, due to the open and obvious evidence that charged him with the duty to investigate the circumstances and learn about the sign and lease. And, in the *SignAd* case, a memorandum of lease wasn't even recorded, and the purchaser was still bound by the lease because the billboard had SignAd's nameplate on it, was periodically maintained by SignAd's crews, and stood at some 50' on the purchased land. Therefore, if no recorded lease or memorandum of lease will still put a potential purchaser on notice due to the surrounding circumstances, like in the *SignAd vs BJZ* case, certainly a memorandum of lease providing enough notice to prompt a prudent purchaser to inquire further will suffice.

*Tomorrow we will run comments by two California out of home attorneys – Marnie Cody and Richard Hamlin.*

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