

A Significant Shift for California Commercial Leasing Commencing on January 1, 2025

December 2024

The new law, known as the Commercial Tenant Protection Act, amends Sections 827, 1632 and 1946.1 of the Civil Code, and adds a new Section 1950.9. The law expands protections and notice requirements for lease terminations and rent increases, as well as places transparency and proportionality requirements for building operating expenses that landlords may pass on to “a qualified commercial tenant.”

To say those changes are remarkable is an understatement.

Who is a “Qualified Commercial Tenant”?

A “qualified commercial tenant” entitled to protections under SB 1103 is a tenant of commercial real property that meets both of the following requirements:

- i. Is a microenterprise (as defined in Business and Professions Code Section 18000(a)), a restaurant with fewer than 10 employees or a nonprofit organization (under Section 501(c)(3) of the United States Internal Revenue Code of 1986) with fewer than 20 employees
- ii. Unless the tenancy is from month-to-month or another period that is less than a month, provides the landlord, before or upon execution of the lease and annually thereafter, with (a) written notice that the tenant is a “qualified commercial tenant,” and (b) a self-attestation regarding the number of employees

Business and Professions Code Section 18000(a) defines a “microenterprise” as “a sole proprietorship, partnership, limited liability company or corporation that meets both of the following requirements: (1) has five or fewer employees, including the owner, who may be part time or full time; and (2) generally lacks sufficient access to loans, equity or other financial capital.”

Recoverable Building Operating Expenses: Restrictions and Automatic Right to Audit

Generally, commercial landlords can broadly recover building operating expenses (OPEX) to help achieve profitability. SB 1103 directly impacts the manner and calculation for the recovery of OPEX by adding a new Section 1950.9 to the Civil Code, which prohibits a landlord from passing on to a qualified commercial tenant any OPEX unless specified conditions are met. Among the conditions is the requirement that the costs be allocated proportionately per tenant and the qualified commercial tenant is provided detailed, itemized supporting documentation (including quote, contract, receipt or invoice from a licensed contractor or service provider) and a written, signed and dated attestation by the landlord certifying that the costs are true and correct. The OPEX must have been incurred within the previous 18 months, or is reasonably expected to be incurred within the next 12 months based on reasonable estimates.

The term “Building Operating costs” is defined as “costs that are incurred on behalf of a tenant for the operation, maintenance or repair of the commercial real property, including, but not limited to, maintenance of common areas, utilities that are not separately metered and taxes or assessments charged to the landlord pursuant to property ownership.” OPEX may not include (i) expenses paid by a tenant directly to a third party; or (ii) expenses for which a third-party, tenant or insurance reimbursed the landlord. The landlord may not, during the lease term, alter the method or formula used to allocate building operating costs in a way that increases the qualified commercial tenant’s share of those costs, unless the landlord provides prior written notice of such alteration to the tenant with supporting documentation of its basis.

The new law also has an automatic right to audit built into the structure of the statute requiring the landlord, before the execution of the lease, to notify the qualified commercial tenant of their right to “inspect any supporting documentation of building operating costs” upon 30 days’ prior written notice.

A qualified commercial tenant will be able to raise a violation of these provisions as an affirmative defense in an action to recover possession based on a failure to pay the fee. A landlord violating this provision is subject to an action for injunctive relief, and will be liable to the qualified commercial tenant for: (i) actual damages, (ii) reasonable attorney’s fees and costs (in the court’s discretion, even if the lease does not have a prevailing party attorneys’ fee provision) and (iii) three times the amount of actual damages and punitive damages (upon showing that the landlord or their agent has acted willfully or with oppression, fraud or malice).

The provisions of this new section cannot be waived, and apply to any commercial lease with a qualified commercial tenant that is (1) signed, commenced or renewed on or after January 1, 2025, (2) week to week, month-to-month or other period less than a month of term irrespective of when it was signed and (3) signed or commenced before January 1, 2025, but does not contain a provision regarding the reimbursement of OPEX.

Additional Notice of Lease Termination and Rent Increases

SB 1103 overrides notice and termination matters that have historically been governed by the contractual agreement between the parties. Starting January 1, 2025, a lease (including a lease signed prior to January 1, 2025) for a term not specified by the parties will be deemed to have automatically renewed for up to a year at the end of the term implied by law if the landlord:

- i. Accepts rent payments from a qualified commercial tenant holding over in a premises after the initial lease term expires
- ii. Fails to provide the qualified commercial tenant with a written termination notice that includes prescribed statutory language in Civil Code Section 1946.1(h), and as follows: (a) 30 days' notice for tenants with under a year of occupancy and (b) 60 days' notice for tenants who have been in the premises longer.

The landlord may not charge the qualified commercial tenant a fee for serving, posting, or otherwise delivering such notice. After landlord has given its termination notice, a qualified commercial tenant may also give a termination notice with a termination date that occurs before the landlord's proposed termination date.

Further, for leases shorter than a month or on a month-to-month basis, a qualified commercial tenant will be entitled to at least a 90 days' notice of any increase in rent or other charges exceeding 10% of the amounts charged during the previous 12 months and at least 30 days' notice for increases less than 10%. Such notices must reference Civil Code Sec. 827 (as amended by SB 1103).

Translation Requirements

SB 1103 extends to commercial leases the requirement to translate contracts historically applicable to residential leases and other transactions. Under the new law, a person who negotiates the commercial real property lease primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean, orally or in writing, must deliver to the other party (and any other person who will be signing the lease), before execution, a translation of the lease in the language in which it was negotiated, that includes a translation of every term and condition in that lease, and even if the tenant uses a translator. If there is a conflict between the English version and translated version, the English version governs, but the translated version is admissible evidence of the parties' intent.

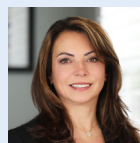
This translation requirement cannot be waived. Failure to comply with this requirement entitles the qualified commercial tenant (but not the landlord) to rescind the lease agreement at any time (no time limit is specified in the new statutory language).

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