

COMMERCIAL LEASE LAW

insider



Practical Tools for Owners, Managers, Attorneys, and Other Real Estate Professionals

JANUARY 2026

FEATURE

Get 16 Protections When Granting Tenants an Option to Renew 1

DEPARTMENTS

PLUGGING LOOPHOLES

Classify All Monies Tenant Owes as 'Additional Rent' 8

RECENT COURT RULINGS

Leasing Attorney Sanctioned for Using Fabricated Evidence Generated by AI 10

Medical Tenant May Rescind Its Lease 11

ANNUAL INDEX

Links to everything we've published in 2025 12

Get 16 Protections When Granting Tenants an Option to Renew

Our checklist covers: setting the conditions for renewal, the process for exercising the renewal, and setting the renewal terms.

Giving tenants the option to renew their lease is a popular inducement, especially in a soft market. But like any other business term, you need to be careful about how you incorporate the arrangement into your lease. Careless drafting leaves you vulnerable to all kinds of risks, not the least of which is being forced to renew the lease of a

deadbeat tenant or the continuation of an undesirable subtenant. Here's a checklist of 16 key protections to get when granting renewal options to shopping center, office, and other commercial tenants.

PHASE 1. SET CONDITIONS FOR RENEWALS

The first set of protections estab-

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lish the conditions you should require a tenant to meet to exercise the option to renew the lease.

1. Bar Renewal If Tenant Is in Default

Condition renewal on the tenant's not being in default at the time it exercises the option *and* at the time of actual renewal. Attorneys warn that many leases impose the non-default condition only at the time of option exercise, which leaves the door open to defaults after the option is exercised and before renewal is consummated.

Result: You lose protection against having to renew a defaulting tenant.

Solution: Here's language you can insert at the very start of the renewal option clause to close this loophole:

MODEL LEASE LANGUAGE

Provided that Tenant is in compliance with all of the terms and conditions of the Lease both at the time of Tenant's exercise of this option and at the time the renewal term is scheduled to commence, Tenant shall have the option to . . .

Negotiating Strategy: Be prepared to compromise in case the tenant insists on limiting the condition to major or material defaults, such as nonpayment of rent. Fearing loss of the renewal option for minor or material defaults is a legitimate concern, attorneys say, especially since landlords have the option of terminating the lease entirely in the event of material defaults.

2. Bar Renewal If Tenant Commits Health or Safety Violations

You don't want to let a tenant renew if it's in violation of any federal, state, or local safety ordinances, health laws, or fire or building codes. In addition to endangering other tenants' health and safety, such tenant violations expose you, the property owner, to risk of fines and penalties.

Solution: Beef up the provision in your lease requiring tenants to comply with all applicable laws and regulations by adding this simple sentence:

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MODEL LEASE LANGUAGE

Tenant's failure to comply with any such *[track the language from the lease referring to the laws with the tenant must comply (e.g., law, order, ordinance, rule or regulation)]* shall constitute an Event of Default under this Lease.

Note: This refinement works in conjunction with the previous clause that stipulated the tenant not be in default to exercise the renewal option.

3. Reserve Right to Reject Financially Risky Tenant

Renewing a tenant that's not in default may still pose a financial risk, such as where the tenant's business is failing and can't be counted on to pay percentage or other rent during the renewal term.

Solution: Require the tenant to provide you with updated financial information *both* when it exercises the renewal option and one month before the start of the renewal period. Expressly state that you have the right to cancel the renewal if you determine that the tenant's financial situation has significantly degraded since it signed the lease and the renewal option was granted.

MODEL LEASE LANGUAGE

Tenant's exercise of this renewal option shall be null and void unless Landlord receives (i) simultaneously with the notice of exercise and (ii) thirty (30) days before the commencement of the Renewal Term, Tenant's then current, complete, accurate, and detailed audited financial states, bank references, Dun & Bradstreet report, and a balance sheet certified as being true by Tenant's chief financial officer. In the event that Landlord, at its sole discretion, determines on the basis of the foregoing information that the creditworthiness of Tenant is less than the creditworthiness of Tenant as of the execution date of the Lease, then Landlord may nullify Tenant's exercise of the renewal option.

Negotiating Strategy: While tenants are likely to accept such a condition on principle, attorneys caution that they may seek to limit the landlord's discretion and/or incorporate more objective criteria, such as a specific net worth dollar amount that the tenant's business must fall below to trigger the landlord's right to nullify the renewal option.

4. Require Franchisee Tenant to Be in Good Standing

It's generally less risky to grant renewal options to tenants that are franchisees of an established and financially stable franchise. But the dynamic changes if the tenant's franchisee status ends or becomes precarious after it signs the lease.

Solution: When dealing with franchisees, require the tenant to certify that it remains in good standing with the franchisor at the time it exercises the renewal option and begins the renewal term.

MODEL LEASE LANGUAGE

Tenant acknowledges that at the time of execution of this Lease, Tenant is a franchisee of *[name of franchisor]* ("Franchisor"). It shall be a condition of Tenant's right to exercise the option to renew granted herein that Tenant furnish Landlord with a letter or certificate from Franchisor confirming that Tenant is a franchisee in good standing at the time of the exercise of the option to renew and will be a franchisee at the time the renewal term is scheduled to commence.

5. Require Chain Tenant to Have a Specific Number of Stores

The more stores a national retail chain owns, the more concessions it can generally command. But that clout may diminish if the chain subsequently shuts down its other operations. The problem is that the renewal option embedded in the lease will reflect the bargaining dynamics that were in place when the agreement was

originally signed rather than the current situation.

Solution: Make the renewal option conditional on the chain tenant's having at least a specific number of other stores in operation. Chain tenants are likely to accept this condition subject to negotiation over the actual number of operating stores and where they're located, according to attorneys.

MODEL LEASE LANGUAGE

It shall be a condition of Tenant's right to exercise the option to renew granted herein that, both at the time of the exercise of the option to renew and at the time the renewal term is scheduled to commence, Tenant shall be operating at least ___ other stores in the State of _____ under the same trade name, selling similar merchandise, and offering similar services as Tenant's store at the Premises.

MAKE THE RENEWAL OPTION SPECIFIC TO THE ORIGINAL TENANT AND SAY THAT IT MAY NOT BE TRANSFERRED.

6. Bar Renewal Option for Subtenant or Assignee

A renewal option is a valuable concession granted to a particular business based on your assessment of its financial strength, reputation, and desirability as a tenant. So, you don't want that concession to pass automatically to any subtenant or assignee that might subsequently move into the space.

Solution: Make the renewal option specific to the original tenant and say that it may not be transferred to a third party via sublease or assignment.

MODEL LEASE LANGUAGE

In the event this Lease is assigned or all or a portion of the Premises is subleased, this renewal option shall be deemed null and void and neither Tenant nor any assignee or subtenant shall have the right to exercise such option during the term of such assignment or sublease.

Negotiating Strategy: Don't be surprised if the tenant pushes back on this. While attorneys advise sticking to your guns, they add that where compromise can't be avoided you should allow for transfer of the renewal option to assignees or subtenants that meet specific criteria, e.g., average gross sales that equal or exceed those of the original tenant.

7. Bar Renewal If Tenant Vacates Space

Another risk to guard against is having to renew a tenant that has "gone dark" and moved to a different property. Exercising the renewal option on the vacant space may make sense for tenants in certain situations, such as to keep a competitor from moving in. Although the landlord will still be able to collect rent from the tenant, having a longstanding vacancy in the center or facility may impair the property's value and the ability to attract and retain other tenants.

Solution: The best protection is to include a continuous operation clause in all leases. But you may encounter resistance from large, powerful tenants. The good news, according to attorneys, is that powerful tenants unwilling to accept a clause requiring them to maintain continuous operation at the premises during the entire lease term may be more amenable to making continuous operation a condition for exercising the option to renew. Here's sample language based on a shopping center model that you can adapt for other types of properties:

MODEL LEASE LANGUAGE

Tenant must have continually operated its business in the Premises during the Shopping Center Hours for the initial term of this Lease and, if applicable, the renewal or extension term in effect at the time the Tenant exercises its option to renew.

**BEWARE THE
DANGER THAT
THE TENANT'S
RENEWAL WILL
NULLIFY THE
THIRD-PARTY
GUARANTY.**

8. Specify Required Minimum Percentage Rent Paid Before Renewal

In the percentage rent context, granting a renewal option makes sense when you have good reason to believe that the tenant will have strong sales over the course of the lease. But you don't want to have to renew tenants whose performance doesn't live up to your expectations.

Solution: Specify that the tenant may exercise the option to renew only if the percentage rent it pays during the lease term meets or exceeds a specific amount. Require the tenant to meet the percentage rent minimum both before and after it exercises the option, e.g.:

- The 18-month period before exercising the option; and
- The six-month period after exercising the option.

Setting a minimum percentage rent for each period will prevent a crafty tenant from renewing its lease on space that it's not operating at full tilt. Otherwise, a tenant that reaches the 18-month minimum may be able to close down for the last eight or nine months of the lease. Nor can the tenant close down and then reopen for the last six months of the term just to reach the six-month minimum.

MODEL LEASE LANGUAGE

Tenant acknowledges and agrees that as a condition for exercising the renewal rights granted herein: (i) Tenant must have paid a total Percentage Rent of not less than \$_____ for the eighteen-month period immediately preceding Tenant's exercise of the renewal option, and (ii) Tenant must have paid a total Percentage Rent of not less than \$_____ for the six-month period immediately after the Tenant's exercise of the renewal option.

9. Make Renewal Contingent on Reaffirmation of Guaranty

There's a danger that the tenant's

renewal will nullify the guaranty provided by a third party when the lease was first signed. This is especially true if a court finds that the renewal expands the guarantor's obligations.

Solution: Don't allow the tenant to renew the lease unless and until the guarantor reaffirms its guaranty. The reaffirmation should also include language stating that the guarantor acknowledges and accepts any changes to the tenant's responsibilities during the renewal term, including but not limited to the obligation to pay higher rent.

MODEL LEASE LANGUAGE

As further condition of Tenant's exercise of its renewal option, accompanying Tenant's notice of exercise, Tenant shall deliver to Landlord an original, signed and notarized reaffirmation of each Guarantor's personal guaranty, in form and substance as follows:

REAFFIRMATION OF PERSONAL GUARANTY

The undersigned [*Guarantor's name*] ("Guarantor") hereby reaffirms for the Renewal Term the provisions of the Guaranty consisting of ____ () pages, which is attached to the Lease as Exhibit _____. [*Insert if necessary: Guarantor acknowledges that Tenant's rent shall be increased at the inception of the Renewal Term and for each subsequent year.*]

Dated: _____

Guarantor's signature: _____

Guarantor's current address: _____

PHASE 2. ESTABLISH PROCESS FOR EXERCISE OF RENEWAL

The next set of protections lay out the process the tenant must follow to exercise its right to renew the lease.

10. Require Tenant to Provide Advanced Notice of Renewal

Require the tenant to give you adequate advance notice—at least six months, attorneys advise—of its decision

to renew. This should give you reasonable time to find a new tenant if the tenant decides not to renew. You also don't want the tenant to renew too early, such as a year or more before the lease term ends.

11. Require Written Renewal Notice by Certified Delivery

Make the tenant provide renewal notice in writing and deliver it to you by certified mail, return receipt requested or other certified delivery method that documents the date you actually receive the notice. This way you'll have evidence in case a tenant who misses the renewal notification deadline falsely claims that it provided timely notice or disputes arise over the validity of the notice.

12. Don't Agree to Send Reminder Notice to Tenant

If a tenant asks you to agree to send it a reminder notice of its renewal rights, say no. In addition to imposing an administrative burden, accepting this obligation enables a tenant who misses the renewal notification deadline to blame you for not sending the reminder notice on time.

13. Provide for Renewal via New Lease or Amendment

Think about how you want to execute the actual renewal agreement if the tenant chooses to renew. Reserve the option to renew the lease by executing either a lease amendment or a new lease. The former method may make sense when you make significant changes to your standard lease form after signing the original lease with the renewing tenant and want those changes to apply during the renewal term. If the lease doesn't change, a quick and simple lease amendment may be the best approach.

PHASE 3. SET BUSINESS TERMS OF RENEWAL TRANSACTION

Once you've laid out the renewal conditions and procedures, look to the key

business terms of the renewal transaction, should it come to pass.

14. Get Right to Raise Security Deposit If Renewal Rent Increases

The tenant's original security deposit may not provide adequate protection if you plan to charge higher rent during the renewal term. So, reserve the right to increase the security deposit in line with increases in rent and other charges under the lease.

Negotiating Strategy: Recognize that post-renewal security deposit adjustments may run in both directions. Thus, tenants may demand a security deposit reduction if the renewal rent decreases or stays the same. They may even want you to commit upfront to reducing the security deposit upon the start of any renewal period. Reasoning: You don't need as large a security deposit as you did when the lease was first signed now that we've demonstrated responsibility and reliability as a tenant during the original lease term.

15. Exclude Initial Lease Concessions from Renewal

If you granted special concessions to get the tenant to sign the original lease, such as free or reduced rent, consider whether you want those concessions to remain available during the renewal.

Solution: Ensure the renewal option clause specifically lists the options, benefits, and other concessions that apply only to the original lease term and not to the renewal term.

16. Establish a Method for Setting Renewal Rent

One of the most critical terms of the renewal option is the renewal rent. It's tricky to determine today how much rent to charge a tenant for a lease renewal that won't happen for years. It may be tempting to skirt the problem by pro-

**A CONTRACT
TO RENEW
THAT DOESN'T
PROVIDE A CLEAR
AND CERTAIN
RENEWAL
RENT CAN'T BE
ENFORCED.**

viding for the renewal at an unspecified rent “to be negotiated” or “agreed to” in the future. Agreeing to agree is okay as long as you actually do reach agreement at renewal time. But if you don’t and the dispute lands in court, the party seeking to enforce the renewal provision may find itself out in the cold.

Explanation: A contract isn’t enforceable unless its essential terms are clear and certain. So, as landlords and tenants have learned in countless court cases, a contract to renew that doesn’t provide a clear and certain renewal rent can’t be enforced. Courts across the country have made it clear that a promise to negotiate isn’t enough to demonstrate a true “meeting of the minds.” Even a clause provid-

ing for the “survival” of the original lease terms in the event of renewal may also fall short.

Solution: Ensure the renewal clause addresses renewal rent head-on. The basic options:

- List a specific dollar amount renewal rent that you and the tenant agree to as part of the original lease negotiations;
- Set out a formula for calculating the renewal rent amount at the time of renewal based on local fair market rents, the Consumer Price Index, or other economic factors; and
- Establish a process for determining renewal rent at the time of renewal such as appraisal or arbitration.

**PLUGGING
LOOPHOLES**

Classify All Monies Tenant Owes as 'Additional Rent'

Doing so will ease legal action for nonpayment.

Commercial leases typically require tenants to pay not just base and percentage rent but other costs, such as electricity, taxes, CAM, security deposits, late fees, etc. Many of the standard lease forms we've seen treat these payments as being separate from rent. The problem with this approach is that the landlord may have to initiate a lawsuit if the tenant doesn't pay the required charge. You can avoid these hassles and make enforcement and collection easier by defining costs not directly related to base and percentage rent as "additional rent."

The "Additional Rent" Advantage

The "additional rent" strategy is especially advisable in the many states that have a streamlined legal process typically known as "summary proceedings" that commercial landlords can use to evict a tenant for nonpayment of rent. While rules vary by state, the process typically involves three basic steps:

- The landlord serves the tenant with a petition and notice of petition;
- The court holds a hearing and makes a ruling; and
- If the landlord wins, the court issues a judgment for possession authorizing eviction.

Classifying lease payments as "additional rent" enables you to use the summary proceedings remedy against tenants that don't make the required payment. Essentially, the failure to pay CAM, taxes,

or other costs becomes the equivalent of failure to pay base or percentage rent for enforcement purposes. Without the "additional rent" clause, you'll have to deal with the hassles of a regular lawsuit to collect the money the tenant owes you.

Leasing Strategy

There are two basic strategies you can use to ensure that lease costs count as "additional rent," according to attorneys:

- **Option 1:** Add a definition of "additional rent" to the miscellaneous section of the lease specifying that all money due to you from the tenant under the lease, other than base and percentage rent, is "additional rent."
- **Option 2:** Separately insert a phrase indicating that a payment will constitute "additional rent" in each lease provision setting out the tenant's obligation to pay the particular charge.

A Washington, D.C., attorney prefers Option 1 because it's simple and eliminates the risk of inadvertently omitting the "additional rent" language for a charge.

It's also advisable to state in the lease that, unless the parties agree otherwise, all the money the tenant owes you will be due within a set number of days—for example, 10—after the tenant gets your bill. In addition to ensuring a fast, simple collection process, this can help prevent disputes over when the tenant is obligated to pay a lease cost.

**THERE ARE
TWO BASIC
STRATEGIES
YOU CAN USE TO
ENSURE LEASE
COSTS COUNT
AS "ADDITIONAL
RENT."**

MODEL LEASE LANGUAGE

For the purposes of this Lease, "Additional Rent" shall mean all sums, charges, or amounts of whatever nature, other than Annual Rent and *[insert if applicable]* Annual Percentage Rent to be paid by Tenant to Landlord in accordance with the provisions of this Lease including, without limitation, *[add to or omit from the following based on your own agreement with the tenant]* taxes, electricity, water, sprinkler, security deposits, late charges, security services, and fees and expenses incurred by Landlord as a result of instituting, prosecuting, or defending any action or proceeding, whether or not such sums, charges, or amounts are referred to as "Additional Rent" and, except as otherwise provided herein, are due *[insert #, e.g., 10]* days after Tenant's receipt of an invoice therefor. Landlord shall have the same remedies for default in the payment of Additional Rent as for default in the payment of Base Rent.

**RECENT
COURT
RULINGS****Leasing Attorney Sanctioned for Using Fabricated Evidence Generated by AI**

What Happened: An otherwise routine real estate broker lawsuit against her employer morphed into something novel and worthy of publication because of the cautionary message it sends to lawyers who put too much trust in artificial intelligence. The broker's attorney in this case acknowledged that he relied on generative AI sources such as ChatGPT, Claude, Gemini, and Grok to prepare his briefs without actually reading the cited cases.

Result: Of the 23 case quotations contained in the opening brief, 21 were fabricated, including quotations that didn't appear in the cited cases, didn't address the topics for which they were cited, or came from cases that didn't exist at all. The AI-generated reply brief wasn't much better.

Ruling: The California court rejected all of the employee's claims and, on its own motion, issued \$10,000 in sanctions against her attorney for fabricating evidence.

Reasoning: The attorney acknowledged that his conduct was "inexcusable" but asked for forgiveness because he wasn't aware of AI "hallucinations." The court wasn't impressed, noting that the hallucinations issue is well known and that courts have been sanctioning attorneys for use of AI-fabricated evidence for several years. Besides, attorneys have a fundamental duty of attorneys to actually read the legal authorities they cite. Had the attorney done this, he would have discovered the problems. Although there's "nothing inherently wrong" with appropriately using AI to practice law, attorneys must "carefully check the veracity and accuracy of all case citations" they or their firm prepares before their briefs are filed and may not "delegate that role to AI, computers, robots, or any other form of technology."

- *Noland v. Land of the Free, L.P.*, 114 Cal. App. 5th 426, 2025 Cal. App. LEXIS 584, 2025 LX 359013, 2025 WL 2629868

Medical Tenant May Rescind Its Lease

What Happened: A pediatric clinic signed a lease requiring the landlord to install equipment and complete other “Landlord’s Work” and deliver the premises within 60 days of the effective date, i.e., June 30, 2024. Despite repeated promises, the landlord didn’t get the work done. And the clinic couldn’t get a license to practice in the facility unless and until it did. With the delay dragging into late December, the clinic told the landlord that it was thinking about rescinding the lease. Three days later, upon discovering that the landlord had been “lying” about the progress of the Landlord’s Work, it sent the landlord a lease termination agreement. When the landlord refused to sign, it sued for rescission of the lease.

Ruling: The Florida federal court ruled that the clinic could rescind the lease.

Reasoning: As in all states, parties seeking to rescind a lease in Florida face an uphill climb. But the clinic in this case was able to produce evidence supporting all six of the elements required to make out a valid rescission claim under state law:

- Privity of contract, i.e., the clinic was in a direct contractual relationship with the landlord;

- The parties entered into a valid contract with each other;
- The landlord’s failure to complete the work necessary for the clinic to get its license frustrated the purposes for which the clinic bargained in making the contract;
- The clinic gave the landlord proper notice of its intention to rescind the contract by sending it the lease termination agreement;
- The clinic wasn’t obligated to do anything to restore the landlord to its pre-contractual position if the lease was rescinded since the landlord was and would continue to remain in possession of the property; and
- Without rescission, the clinic wouldn’t have an adequate legal remedy—calculating consequential damages would be impossible, the clinic argued, given that it couldn’t conduct business and thus document losses without a license to operate.

• **Advanced Care Pediatrics of Fla. v. DPS PR Realty, Inc.**, 2025 U.S. Dist. LEXIS 170877, 2025 LX 316265, 2025 WL 2531514

ANNUAL INDEX

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FEATURE ARTICLES

Features

- Managing Vacancies: Collect Rent from Small Tenant While Searching for Big Tenant **MLC**
- Get Flexibility to Decide on Removing Tenant Installations When Lease Ends **MLC**
- Set Ground Rules on Tenant’s Use of Patios & Outdoor Dining Spaces **MLC**
- Help Tenant’s Cash Flow by Calculating Percentage Rent on a Cumulative Basis **MLC**
- Get 12 Protections When Letting Tenant Get Telecom Services from Outside Provider **MLC**
- Keep Tenant’s “Good Guy” Guarantor on the Hook Until You Get Leased Space Back **MLC**
- How to Avoid Costly Estoppel Certificate Disputes **MLC**
- Set 8 Ground Rules When Letting Tenants Host Receptions in Their Office Space **MLC**
- How to Accept Partial Rent Payments Without Waiving Right to Collect Full Amount Owed **MLC**
- Get 16 Lease Protections When Letting Tenants Use Conference Center **MLC**
- Get 9 Protections When Agreeing to Take Over a New Tenant’s Lease **MLC**
- Get Right to Perform Environmental Audit at Lease End **MLC**

Drafting Tips

- Get 5 Lease Protections When Granting Free Rent to Tenants **MLC**
- Require Tenants to Pay Maximum Premium Rent for Long Holdovers **MLC**
- Protect Your Right to a Share of Tenant’s Sublease or Assignment Profits **MLC**
- Make Tenant Conceal Unsightly Rooftop Equipment **MLC**
- Get 5 Protections When Letting Tenants Install Special HVAC Equipment **MLC**

Negotiating Tips

- Limit Your Duty to Re-Let Vacancies When Mitigating Damages of Defaulting Tenant **MLC**
- Be Sure Limited Guaranty Covers Your Out-of-Pocket Leasing Costs

Plugging Loopholes

- Clearly Limit First Refusal to a One-Time Right
- Don’t Let Tenant Self-Help Work Void Your Services Provider Warranties **MLC**
- The Problem with Open-Ended Refund Deduction Rights
- Don’t Let Lease Ambiguity Cost You Full Value of Real Estate Tax Abatements **MLC**
- Get Right to Collect Rent Directly from Subtenant If Tenant Defaults **MLC**

Traps to Avoid

- Don't Get Locked in When Granting Tenants Sublease/Assignment Processing Fee Concessions
- Failure to Specify Base Rent Amount May Render Lease Invalid & Unenforceable

DEPARTMENTS

Dos & Don'ts

- Define Key Business Words Like "Department"—Or Don't Use Them
- Don't Require Tenant to "Reimburse" You for Real Estate Taxes You Haven't Yet Remitted

Pop Quiz

- Can Tenants Sue to Block Leases for Legal Marijuana Uses?

Winners & Losers

- Is Tenant's Cotenancy Rent Abatement an Unenforceable Penalty to Landlord?

RECENT COURT RULINGS

Landlord Wins

- Landlord Needn't Mitigate Damages to Accelerate Defaulting Tenant's Rent
- Landlord Doesn't Have to Evict Tenant to Mitigate Damages
- Landlord Entitled to Attorney's Fees in Enforcing Attorney's Fees Clause of Lease
- Restructuring Lease Doesn't Get Defaulting Tenant's Guarantors Off the Hook
- Tenant Can't Prove Damages from Landlord's Warranty of Suitability Breach
- Tenant Abandons Property by Failing to Remove It Upon Eviction
- Landlord Needn't Prove Damages to Evict Tenant for Material Breach
- No Full Rent Abatement for Mold When Part of the Space Is Safe
- Tenant Can't Prove Oral Agreement to Modify Lease Term
- Landlord Terminated Lease Before Tenant Filed for Bankruptcy
- Tenant Must Pay \$197,356 for Turning Tobacco Store into a 'Head Shop'
- Lease Doesn't Give Tenant 10-Day Grace Period to Pay Rent
- Limited Right to Re-Enter for Repairs Not Enough to Prove Premises Liability
- Landlord Not Responsible for Damaging Tenant's Anti-Theft System
- Landlord May Accelerate Abandoning Tenant's Rent Without Mitigating Damages
- Strip Mall Restaurant Tenant's Refusal to Move Storage Trailer Is a Material Breach
- Tenant Must Pay Tax Escalation as Additional Rent Even Without Written Demand
- Landlord's Decision to Demolish Building at Lease End Doesn't Relieve Tenant of Duty to Repair
- Tenant Must Pony Up Unpaid COVID-19 Rent

Landlord Loses

- Guarantor's Liability Ends When Tenant Surrenders, Not When Landlord Accepts Surrender
- Subtenant That Vacates on Time Need Not Pay Holdover Rent to Tenant
- Landlord Can't Collect Future Rent Without Lease Acceleration Clause
- Tenant Doesn't Need Landlord's Consent to Make Non-Structural Alterations
- Tort Claim Is Regurgitation of Landlord's Lease Claim Against Tenant
- U.S. Government Can Terminate Lease When Premises Become 'Untenantable'
- Individual Owners Aren't Liable for LLC's Lease Debts
- Jury Trial Waiver in Guaranty Doesn't Bind Non-Signatory Tenant
- Landlord Waived Its Right to Written Notice of Lease Extension
- Email Exchange May Constitute Enforceable Lease Modification