

How A Landlord And Tenant Can Both Benefit From Using A Good Guy Guarantee In A Commercial Lease

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A good guy guarantee is a popular mechanism used to mitigate risks from the perspectives of both a landlord and tenant for all types of commercial leases including restaurant, office and/or retail. When structured properly, the good guy guarantee can be simultaneously advantageous to both a landlord and a tenant. The main purpose of a good guy guarantee is to address any issues that may result from a tenant defaulting under its obligations in a lease and to try to address the liability and recourse of both parties from the day you sign the lease as opposed to litigating at the time of the default.

Landlords and tenants each have a different perspective of the benefits of a good guy guarantee required for entering into a lease. The landlord does not want a tenant to remain in the premises and not pay rent, which forces the landlord to commence an eviction proceeding costing the landlord additional time (usually without receiving rent) in the legal proceeding of a few months and legal expenses. The landlord ensures with the good guy guarantee that it receives the premises from tenant in a relatively short time period so landlord can rent the premises again and receive income. Landlord still retains the ability to sue the tenant if there are any of the tenant's assets remaining after the tenant vacates the premises. The good guy guarantee generally provides for a notice to Landlord of approximately 30 to 90 days before the tenant vacates and delivers the premises to the landlord for the landlord to commence its marketing of the premises prior to the space being returned as required under the lease, usually in broom clean, vacant, without tenant's personal property and all tenant defaults cured (rent paid to date).

Good guy guarantors prefer the good guy guarantee over a standard guarantee since the guarantor's liability ends upon the premises being returned to the landlord with the rent paid in full and all defaults cured under the lease. The good guy guarantor usually is a principal of the tenant who is familiar with all aspects of the tenant's business. This limited liability releases the good guy guarantor from paying rent for the remainder of the lease term, which in many instances can be for several years.

The good guy guarantor would like the good guy guarantee to provide that in the event the good guy guarantor is no longer

associated with the tenant, the good guy guarantor: (i) can substitute a new good guy guarantor with an individual having a net worth equal to the good guy guarantor's net worth on the date of lease execution; (ii) will receive notices of a tenant's default under the lease with the good guy guarantor having the right to cure the tenant default; (iii) approve in writing any modifications, amendments and/or extensions of the lease so as not to extend the good guy guarantor's liability under the lease; and (iv) has the right to request an assignment/sublease of the premises from the tenant to the good guy guarantor in order to provide the good guy guarantor with control and access to the premises.

One of the main advantages of a good guy guarantee for a landlord is that typically the tenant will have to forfeit its entire security deposit (which can range from three — six months of rent) if the tenant vacates the premises prior to the expiration of the lease, as per the good guy guarantee. If you are to take into consideration the tenant's obligation to provide approximately three months' notice of its intention to vacate and then the loss of potentially six months of security, this hedges the landlord's risk of having the property vacant without receiving cash-flow and gives the landlord a significant amount of time to find a replacement tenant. Another benefit for the landlord in retaining the security deposit is that it may cover unamortized expenses related to the lease, such as brokers' fees and commissions, tenant work letter contributions and free rent periods provided under the lease to a new tenant. On the other hand, the tenant will want the return of the security deposit to offset costs the tenant may incur in vacating the premises and for vacating the premises in a timely manner and not holding over thereby preventing landlord from gaining possession of the premises. This is a negotiation issue, which should be clearly stated in the good guy guarantee or lease.

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