

December 13, 2024

California Senate Bill 1103

Client Bulletins

Author: **Claire O'Connor**

California Senate Bill 1103 (“SB 1103”) takes effect January 1, 2025 and will impact leases, amendments, and other lease modifications with respect to commercial property in California. In an effort to provide additional protections to small business tenants, it imposes a translation requirement, new termination timelines, a notice requirement for certain rent increases, and limitations on operating cost pass-throughs, as further described below.

However, these changes only apply to qualified commercial tenants (hereinafter referred to as a “QCT”), which are defined as (A) (i) a business with fewer than 5 employees that generally lacks sufficient access to loans, equity, or other financial capital, (ii) a restaurant with fewer than 10 employees, or (iii) a nonprofit organization with fewer than 20 employees, that (B) has provided the landlord with a written notice that the tenant is a QCT and a “self-attestation” regarding the number of employees. Among other uncertainties identified below, it is unclear what qualifies as a “restaurant” under this new law, as the term is not further defined.

Translation Requirement:

Commercial landlords are now required, prior to execution, to provide to QCTs and any other person who will be signing the agreement a copy of the document translated into Spanish, Chinese, Tagalog, Vietnamese, or Korean if the agreement was negotiated by the landlord and tenant primarily in any of these five languages. Further, this requirement applies to leases, subleases, licenses, rental contracts and other such agreements for nonresidential zoned commercial property entered into on or after January 1, 2025. The English-language contract must be executed and the translated version may be, but need not be, executed. A translated notice must be given at the time and place the agreement is executed. SB 1103 does not specify the required contents of the notice.

Only the agreement, as in the document creating the rights and obligations, and the subsequent amendments or modifications making substantial changes to the rights and obligations must be translated. However, the following terms within any such agreement or amendment may remain in English as they appear in the executed English-language document: names, title, addresses, brand and trade names, trademarks, registered service marks, designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amount expressed in numerals, dates, and words or expressions that do not have a generally accepted translation.

This portion of SB 1103 places considerable risk on landlords, as a QCT may rescind the agreement in the event of a violation. This gives QCTs a backdoor termination right if this translation requirement is not followed precisely. It also imposes a considerable administrative and economic burden, as some are estimating the translation service itself could cost around \$10,000.

Further, the translation requirement cannot be waived. It is unclear if the QCT can sign an acknowledgment that the translation requirement has been carried out as required and that the QCT has no claims under the new law as of the time of the acknowledgment. If permissible, this is likely an important risk mitigation tool.

Termination Notices:

Further, under SB 1103, landlords must give 60 days' notice to terminate a lease without a specified term where the QCT has occupied the property for at least one year. If a QCT has occupied the property for less than one year, 30 days' notice is sufficient. Landlord's notice must contain language regarding a QCT's rights regarding abandoned property. The language can be found in the amended California Civil Code Section 1946.1. Notwithstanding any proper notice given by the landlord, if landlord accepts rent from a QCT beyond the purported termination date, the lease may be deemed renewed.

Rent Increase Notices:

Under SB 1103, rent increases under certain short-term leases will not be effective until the required notice has been given in the required manner, and the notice period has expired. This amendment only applies to leases that are month-to-month, week-to-week, or less than one month. If the rent is to increase by 10% or less of the rental rate charged at any time during the 12 months before the effective date of the increase, Landlord must give at least 30 days' notice. If the rent increase is to be greater than 10% of the rental rate charged at any time during the immediately preceding 12 months, landlord must give at least 90 days' notice. If the lease requires a longer notice period, the lease will control. Landlord must include in any notice the information included in California Civil Code Section 827, amended by SB 1103.

Operating Costs:

Lastly, Civil Code Section 1950.9, enacted by SB 1103, will amend how and which operating costs may be passed through with respect to tenancies that (i) are executed, commence, or renew after January 1, 2025, (ii) are for a term that is week-to-week, month-to-month or other term that is less than a month, or (iii) are executed or commence before January 1, 2025 that do not contain an operating costs provision. This portion of SB 1103 limits which costs a landlord may pass through to tenants via operating expenses and adds an administrative burden on landlords with respect to record keeping.

Landlord may only collect operating costs once certain conditions are met, including the following:

1. The operating expenses are allocated proportionately per tenant, by square footage or other method substantiated through supporting documentation;
2. The operating expenses directly benefit the leased premises and do not include expenses paid by tenant directly to a third party or expenses for which a third party, tenant or insurance has reimbursed the landlord;
3. The operating expenses were incurred within the past 18 months or are reasonably expected to be incurred within the next 12 months;
4. Landlord has provided the QCT with supporting commercial documentation of the previously incurred expenses; and
5. Before the lease is executed, the landlord has provided QCT with written notice of its right to inspect the supporting documents for the expenses within 30 days after the QCT's request.

Further, during the tenancy, the landlord may not alter the method or formula used to allocate operating costs to the QCT in a way that will increase the tenant's share of the costs, unless written notice of the change in the method or formula has been provided along with supporting documentation of the basis of the alteration.

This presents several issues for commercial landlords. First, if the lease does not already contain an operating expense provision, landlords will be required to provide documentation of previously incurred expenses in order to collect those costs starting after January 1, 2025, regardless of whether

landlord has been collecting operating expenses from tenant up until that point. This will present an issue if landlords have not kept sufficient supporting documentation for costs incurred in the past 18 months or expected to be incurred in the near future. Further, it reasons that landlords will not be able to collect operating expenses for those leases that have been executed prior to January 1, 2025 but do not go into effect until after January 1, 2025 or which are for short term tenancies described above, if it has not already issued the notice required to be given prior to execution. A question arises as to whether leases that fall into these categories need to be re-executed. There are no apparent exceptions to these issues. Further, the requirement that landlord provide an itemized statement or other such supporting documents prior to recovering operating costs seems to prohibit collecting reserves on the front end.

In the event of a violation, a QCT can (i) use the violation as an affirmative defense in an action by landlord to recover possession due to failure to pay the operating expenses assessed, and (ii) pursue landlord for actual damages and attorneys' fees and costs. If a court finds that landlord acted willfully or with oppression, fraud, or malice, landlord may also be found civilly liable for three times the amount of actual damages and punitive damages.

Like the translation requirement summarized above, this provision may not be waived by a QCT.

Please reach out to the points of contact for this article if you need additional information or have any questions.

Nicole Fry is a Partner in the Real Estate Practice Group. She can be reached at 312.506.3429 or nfry@beneschlaw.com.

Kathryn Kramer Gaydos is a Partner in the Real Estate Practice Group. She can be reached at 216.363.4173 or kgaydos@beneschlaw.com.

Kathleen M. Vlasek is a Partner in the Real Estate Practice Group. She can be reached at 216.363.4584 or kvlasek@beneschlaw.com.

Robert C. Ondak Jr. is a Partner in the Real Estate Practice Group. He can be reached at 216.363.4533 or rondak@beneschlaw.com.

Disclaimer: The information contained in this document is intended for general guidance only. It does not constitute legal advice or create an attorney-client relationship.

Related Practices

Real Estate

Related Professionals



Nicole Fry
Partner
Real Estate
T. 312.506.3429
nfry@beneschlaw.com



Kathryn Kramer Gaydos
Partner
Real Estate
T. 216.363.4173
kgaydos@beneschlaw.com



Kathleen M. Vlasek
Partner
Real Estate
T. 216.363.4584
kvlasek@beneschlaw.com



Robert C. Ondak Jr.
Partner
Real Estate
T. 216.363.4533
rondak@beneschlaw.com