



legal brief

by Jason W. Mauck

Your Commercial Lease

I imagine that many of the readers to this column have leases for their businesses; and I imagine that these leases come in all shapes and sizes, from the warehouse to the small store front, no bigger than a large bedroom. What's important to know about these leases is that your business lease has very few state law protections regarding your tenancy compared to a residential tenancy. For example, in a commercial tenancy you can negotiate a notice period for termination of the lease. So, if you and your landlord agree to 10 days of notice before he can file an unlawful detainer (an eviction), that's acceptable by state law. Whereas in a residential setting it is generally 3-days of notice absent extenuating circumstances. Another example is that a business leasee has no right to habitability like a residential tenant. Rain in the storeroom? Too bad! Furthermore, commercial landlords can shift repair obligations and property tax obligations through a commercial lease, unlike in a residential leases.

What this all boils down to is that you, as a business owner, need to read the lease

very carefully! In general, the court looks at commercial leases as though the contract was negotiated at arms-length between two knowing and sophisticated parties. That's how the court can rule on a commercial lease by the terms of the agreement without reference to the relative bargaining power of the parties. For example, if there is no provision regarding a locked-in rental amount, the court may find that the landlord has a right to unilaterally raise the rent to any amount without warning. This sort of behavior is generally discouraged, by including terms in the lease regarding duration and rental amount. In short, the terms of the lease contract generally prevail in a dispute, so it is of the utmost importance to review and understand your commercial lease.

Ericksen Arbuthnot is experienced in dealing with commercial tenancies and leases, and would be happy to help review or litigate any leases. Feel free to contact Jason Mauck at jmauck@ericksenarbuthnot.com or at 510-832-7770 if you have any questions or would like to discuss your lease.