

Rental Acceleration Provisions in Commercial Leases

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If a tenant defaults upon payment of rent, the landlord does have a right to accelerate the balance of the rental due for the remaining lease term. This practice is not, however, favored by the courts; therefore, the provision must be clear.

An enforceable provision will simply state that upon default, the landlord may accelerate as due all rental remaining due under the lease. Provisions which state that the tenant is liable for the remaining rental less the fair market value thereof are not accepted as acceleration clauses.

It is a good idea for enforceability to have the tenant initial the provision.

While the likelihood of a tenant curing a default by paying an accelerated amount is rare (I had it happen once in my 40 years of practice), it has the benefit of an enhanced monetary judgment which can be used for going after a tenant's assets after judgment.

Note that if a court awards an accelerated rental judgment, that it MUST reserve jurisdiction of the case in the judgement, as the tenant has the right to an accounting from the landlord at the end of the lease term for credit for any rent received by the landlord through the end of the lease term which exceeds the accelerated rent amount.

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