

What Landlords Need to Know about Acceleration of Rental Provisions

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Acceleration of rental provisions in commercial leases allow the landlord, upon the tenant's default, to accelerate the balance of the rent due for the balance of the lease term making it due and payable immediately, much like the acceleration of a mortgage loan. (In Florida, acceleration provisions are not permitted in residential leases.) Acceleration provisions are not favored by the courts and therefore must be expressly drawn.

Provisions which indicate that the landlord is permitted to "accelerate" the rental due under the lease but only as reduced by the rent which the landlord could receive going forward based on the leasing market conditions are not true acceleration clauses, but rather damage computation clauses. Acceleration clauses must be pure – that is, they must simply state that the landlord has a right to accelerate the balance of the rental due through the end of the lease term.

When a final judgment for acceleration of rent is entered by the court, the law requires the court to retain jurisdiction for an accounting at the end of the lease term. If the landlord has been able to recapture a portion of the accelerated rental judgment, then the tenant is entitled to receive credit for those payments received.

Moreover, if the landlord has retaken possession of the premises for the benefit of the tenant, and if the rent is accelerated, the landlord must still make a reasonable effort to mitigate the damages by attempting to re-lease the premises using reasonable due diligence.

In short, if properly drafted and the legal requirements met, an acceleration right is a powerful arrow in the landlord's quiver.

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