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“Good Guy” Guaranty

Stephen Lasser · Sunday, April 13th, 2014

Like other business negotiations, commercial lease negotiations depend on market conditions and the bargaining strength of the parties to the transaction (i.e., the landlord and tenant). Unless a commercial tenant is a bank or fortune 500 company, most landlords require new tenants signing a lease to deposit a sum of money equal to several months rent as a security deposit or that the tenant deliver a letter of credit in lieu of a cash security deposit.

In addition to posting a security deposit, some landlords require that a principal of a corporate tenant without a long track record sign a good guy guaranty. (For example, a hedge fund manager who is one of our clients recently opened a new office for a new fund he formed and the landlord required him to sign a good guy guaranty.) In its most basic form, a good guy guaranty is a personal guaranty for the payment of rent that remains in effect as long as a tenant remains in the rented space.

Similarly to other personal guarantees, a good guy guaranty protects landlords in situations where a corporate tenant stops paying rent by making a principal of the corporate tenant personally liable for the unpaid rent. However, a good guy guaranty is less onerous for tenants than an unlimited personal guaranty because the tenant has the ability to be a “good guy” and vacate the space if the tenant’s business is struggling and thereby eliminate the personal liability of the principal who signed the good guy guaranty. This benefits the landlord too because the landlord can re-rent the space rather than having to commence a non-payment eviction proceeding in housing court, which can often drag on for several months.

Although conceptually in its basic form a good guy guaranty is straight forward, the scope of a good guy guaranty can be expanded to include non-monetary defaults and may even require a tenant to be paid up to date in rent in order for the tenant to have the right to turn over the space to the landlord and have the principal’s personal liability extinguished. In sum, the form of good guy guaranty used for a particular lease transaction varies and will depend on the bargaining strength of the parties as well as their knowledge and the advice they receive from legal counsel.

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