

**NIESAR & VESTAL LLP**

**Law Alert**

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**New Law Impacts Leases to Certain Commercial Tenants**

On September 30, 2024, Governor Newsom approved California Senate Bill No. 1103 (SB 1103), which extends certain rights previously reserved for residential tenants to “qualified commercial tenants” (“QCT” or “QCTs”). Starting January 1, 2025, landlords of commercial properties will need to implement new procedures when entering into leases with a newly designated class of tenants.

SB 1103 provides commercial tenant protections for QCTs only, defined as microenterprises (meaning a business with 5 or fewer employees that lacks sufficient access to loans, equity, or other financial capital), restaurants with fewer than 10 employees, or nonprofit organizations with fewer than 20 employees. Even if a tenant meets this definition, to benefit from the protections created by SB 1103, it must affirmatively provide written notice to the landlord of its QCT status before the execution of the lease (if the tenancy is longer than 30 days) and annually thereafter.

SB 1103 imposes new translation requirements, creates standards for calculating common area maintenance fees, and provides more time to respond to a rent increase or termination of tenancy.

***Translation Requirements***

Certain commercial transactions (e.g., mortgages) already include a translation requirement. SB 1103 extends this requirement to commercial lease agreements for QCTs. For any lease or rental agreement that was negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, the landlord must provide the tenant with a translated copy of the lease or rental agreement prior to execution. If a translated copy of the lease or rental agreement is not provided, the QCT may rescind the lease or rental agreement. These rights may not be waived.

***Building Operating Expenses***

SB 1103 creates Civil Code Section 1950.9, which provides that a landlord of a commercial real property may not charge a QCT a fee to recover building operating costs unless all of the following apply:

- The building operating costs are allocated proportionately per tenant, by square footage, or another method as substantiated through supporting documentation provided by the landlord to the QCT.

- The building operating costs have been incurred within the previous 18 months, or are reasonably expected to be incurred within the next 12 months based on reasonable estimates.
- Before the execution of the lease, the landlord provides the prospective QCT a paper or electronic notice stating that the tenant may inspect any supporting documentation of building operating costs upon written request pursuant to the next paragraph.
- Within 30 days of a written request, the landlord provides the QCT supporting documentation of the previously incurred or reasonably expected building operating costs.
- The costs do not include expenses paid by a tenant directly to a third party.
- The costs do not include expenses for which a third party, tenant, or insurance reimbursed the landlord.

A landlord of a commercial real property cannot charge a fee to recover any building operating costs from the QCT until the landlord provides the QCT supporting documentation. In addition, during the course of a commercial tenancy, the landlord cannot alter the method or formula used to allocate building operating costs to the QCT in a way that increases the QCT's share of those costs, unless the QCT is provided with written notice of the change in the method or formula with supporting documentation of the basis of the alteration.

A QCT may raise a landlord's violation of this section as an affirmative defense in an action for unlawful detainer or recovery of possession based on failure to pay building operating costs. Further, a landlord that violates this section may be liable to a QCT for actual damages, attorneys' fees, and, upon a showing that the landlord or its agent acted willfully or with oppression, fraud, or malice, potentially up to three times the amount of actual damages, plus punitive damages. These protections cannot be waived.

### ***Notice of Rent Increases and of Termination of Month-to-Month Leases***

QCTs will now be entitled to: (a) at least 90 days' advance notice of rent increases exceeding 10%, and (b) for qualified tenants who have occupied the property for over 12 months, at least 60 days' prior written notice before nonrenewal or termination (with the tenant retaining the right to end the tenancy on 30 days' notice).

To avoid penalties and ensure smooth tenant relations, any commercial landlord in California who leases property to QCTs should ensure that their property managers and staff are informed about, and comply with, the new requirements taking effect on January 1, 2025. It is also advisable to consult with an attorney to conduct a thorough review of all current leases to identify any compliance gaps with SB 1103, and make sure that any relevant lease forms/agreements align with these new requirements.

If you have questions arising out of the aforementioned changes and/or how to implement them, please feel free to contact Alan Seher ([aseher@nvlawllp.com](mailto:aseher@nvlawllp.com)) or Carolina Aricu ([caricu@nvlawllp.com](mailto:caricu@nvlawllp.com)).

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