ARTICLE:
COMMERCIAL PROPERTY OWNERS AND SB 1103: NEW CONSUMER-TYPE PROTECTIONS FOR "QUALIFIED COMMERCIAL TENANTS" IN NON-RESIDENTIAL LEASING TRANSACTIONS

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On September 30, 2024, Governor Newsom signed into law Senate Bill 1103,[1] an unprecedented legislative measure affecting non-residential landlords' transactions with a broadly defined class of "qualified commercial tenants." Effective January 1, 2025, for month-to-month or other periodic tenancies of less than one month, this statute creates longer notice periods for rent increases[2] and for termination or nonrenewal of tenancies.[3] For all leases with qualified commercial tenants entered into or renewed on or after January 1, 2025, regardless of the duration of the lease term, SB 1103 restricts the landlord's right to pass through common area maintenance and other expense increases regardless of the contract terms of the lease, with onerous penalties and liabilities for landlords who violate these restrictions.[4] It further requires specified language in such leases and in notices given pursuant to such leases to advise the tenant of these provisions of law.[5] The new law also requires commercial property landlords who negotiate with qualified commercial tenants in languages other than English to provide translations of lease documentation into one of five specified languages, giving the tenant an apparently unfettered right to rescind the lease at any time if the required translation was not given at inception of the lease.[6]

Most of these new requirements were added to existing laws that formerly applied only to residential rental agreements or other "consumer" transactions.[7] As extended to the commercial context, these restrictions apply only where the tenant meets the statutory definition of "qualified commercial tenant"—a status that will not always be easy to discern and not readily avoidable by the landlord. The provision for translation of commercial lease documentation into one of the five specific languages (Spanish, Chinese, Tagalog, Vietnamese, or Mandarin) applies only where the landlord negotiates "primarily" in that language, and in that respect its applicability is somewhat controllable by the landlord.[8] The

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other provisions require only that the tenant inform the landlord that it is a "qualified commercial tenant," leaving the landlord to bear the burden of figuring out how the statute applies and of complying with its requirements, a matter that, as discussed later in this article, is not always easy to determine or verify.

The sponsors of the bill no doubt had good intentions and sought to protect certain classes of tenants from fraudulent or rapacious landlord practices, but the failure to recognize how the commercial leasing market works and to distinguish such practices from the customary and legitimate leasing terms used in the marketplace will have unintended consequences both for "qualified commercial tenants" and for commercial landlords, and potentially for other tenants of nonresidential property as well. The new statutory provisions will require commercial landlords dealing with "qualified commercial tenants" to change their lease documentation and negotiating practices. They will affect landlords' exercise of non-renewals or lease terminations and rental adjustments for shorter-term periodic leases. More broadly, they will seriously complicate and constrain landlords in the administration of escalation clauses and other expense pass-through provisions and make enforcement and collection of expense pass-throughs difficult, if not impossible, for a wide variety of commercial leases with qualified commercial tenants, including longer-term or whole-building leases. Even more broadly, unless such qualified commercial tenants are completely excluded from multi-tenant commercial properties, these provisions have the potential to affect all leases that would otherwise be structured as net leases with expense pass-throughs or escalation clauses, due to the difficulty of complying with the requirements of SB 1103 while maintaining customary and legitimate pass-through provisions that are both expected and heavily negotiated between tenants and landlords in the commercial leasing marketplace.

The remainder of this article describes in more detail when these provisions apply, and if so, what these provisions require of landlords, their leasing practices, the terms of their leasing transactions, and the potential penalties or liabilities faced by landlords found not in compliance with the new provisions.

A. Statutory provisions affected by SB 1103

SB 1103 is not a single stand-alone statute. Instead, it consists of several amendments to existing statutes that formerly pertained only to residential leases and other non-business, consumer transactions, plus one new provision applicable only to commercial leases.

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The provisions covering changes of rent or other terms on renewal or extension of an existing lease have been added as amendments to Civ. Code, § 827, which now applies to leases to qualified commercial tenants in nonresidential properties as well as leases to tenants in residential dwellings.[9] The provisions imposing the translation requirements for leases to qualified commercial tenants negotiated in languages other than English have been layered into the existing statute, Civ. Code, § 1632, which formerly applied only to residential leases and some other consumer contracts and consumer financing transactions.[10] The provisions governing periodic lease renewals and notices of termination are contained in amendments to Civ. Code, § 1946.1, which now applies to commercial leases to qualified commercial tenants as well as to residential leases, with some additional provisions applicable only to such commercial leases.[11]

The one completely new statute enacted by SB 1103 is Civ. Code, § 1950.9, which implements the restrictions on operating cost increases and other pass-through expenses under virtually all leases of nonresidential property to qualified commercial tenants and is not applicable to residential tenancies.[12]

B. Properties and property owners or landlords subject to SB 1103

All of the requirements of the various statutes affected by SB 1103 are imposed with respect to a "landlord" or "owner" of a "commercial real property"[13] or a "tenant," "tenancy," or "lease" of "commercial real property,"[14] except the translation requirement applies only to "a lease, sublease, rental contract or agreement, or other term of a tenancy contract or agreement covering a nonresidential-zoned commercial space."[15] The term "commercial real property" is defined expansively as including *all real property located in the State of California,* excepting *only* dwelling units, mobilehomes, and recreational vehicles.[16] There are no qualifications as to the size, use, improvements, or other characteristics of the real property, nor of the nature, identity, size, or financial capacity of the owner or landlord of the property. Some of these provisions can apply to leases of land or buildings, or portions of such buildings, and potentially to ground leases, standalone building leases, and other sizeable transactions, including but not limited to those involving farmland or other properties not ordinarily considered "commercial." Because they fail to specify otherwise, these provisions should be considered to apply whether the owner or landlord is a natural person or a partnership, limited liability company, corporation, or other legal entity or trust, regardless of sophistication, financial capacity, or legal representation.

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While the sponsors of this legislation evidently assumed that in any transaction involving a "commercial real property," as so defined, the owner or landlord would have the upper hand in bargaining with any "qualified commercial tenant," the statute includes no provisions where the opposite may be true. While this assumption may be accurate in the majority of cases, the failure to consider the possibility that the circumstances may be reversed means the statutes will sometimes put the finger on the scales in favor of tenants with superior bargaining power or sophistication as compared with the owner or lessor of the commercial real property involved. There are simply no statutory exceptions for such weaker or less sophisticated or knowledgeable landlords, nor are there any provisions that depend on whether a party (tenant or landlord) is represented by counsel or other sophisticated advisors or agents in the leasing transaction.

In most respects, the changes in law effected by SB 1103 may be assumed not to affect landlords or lease transactions that do not involve "qualified commercial tenants," but there is one exception to this generality. The possibility exists that a party that does not meet the statutory requirements to be a qualified commercial tenant at the inception of a lease can later become a qualified commercial tenant and thereby trigger application of the SB 1103 provisions. In this respect, the statute has potential effects on all commercial property owners in California, who may inadvertently enter into leases with parties who later turn out to be qualified commercial tenants.

C. "Qualified Commercial Tenants" entitled to the protections of SB 1103

Under all of the substantive sections of the Civil Code affected by SB 1103, the protections afforded to tenants are limited to "qualified commercial tenants" who are "tenants of commercial real property."[17] The term "qualified commercial tenant" is a term of art determined by two criteria: first, the tenant must fall into one of three categories of protected classifications defined by the statute; and second, the tenant must provide the landlord with written notice and attestation of such status at certain times required by the statute. These two criteria are separately but consistently defined in each section of the Civil Code affected by SB 1103, as described in the following paragraphs.

1. Categories of qualified commercial tenants

In order to claim status of a qualified commercial tenant, the tenant of a commercial real property must be one of the following: (a) a "microenterprise,"

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as defined in Bus. & Prof. Code, § 18000, subd. (a); (b) a restaurant with fewer than 10 employees; or (c) a private, nonprofit 501(c)(3) organization with fewer than 20 employees.[18] Each of these categories has some areas of uncertainty that should be considered in any leasing context.

First, both the restaurant criterion and the nonprofit organization criterion include a specified number of employees as part of the definition. However, the amended code sections do not define "employee," so it is unclear whether part-time or seasonal workers should be included in the calculation and whether the number of employees is limited to those on-site or includes all employees wherever located. Further, the amended code sections do not state when the number of employees is measured. A tenant who is not a qualified commercial tenant at the time of lease execution because it has more than 10 employees (if it is a restaurant) or more than 20 employees (if it is a nonprofit) could later become a qualified commercial tenant through attrition, shrinkage of operations, or assignment of a lease by a multi-site operator to a single-site operator. By the same token, a tenant who is initially a qualified commercial tenant could potentially lose its status as a qualified commercial tenant if it grows the restaurant business or nonprofit operation and expands beyond the employee limit specified in the statute. These conclusions are buttressed by the requirement that the tenant must provide a written certification that it is a "qualified commercial tenant" and set forth the number of employees in that certification both at inception of the lease and periodically during the term of the lease, as discussed below.

Second, the "microenterprise" definition in the cited Business & Professions Code section has both an employee count and a financial condition standard, either of which a tenant may attain or lose over the life of the lease. As defined, a "microenterprise" can be a sole proprietorship, partnership, limited liability company, or corporation, but it is a "microenterprise" only if it has five or fewer employees, including the owner, who may be part-time or full-time, and only if it "generally lacks sufficient access to loans, equity, or other financial capital."[19] Again, the required notification to the landlord that the tenant is a qualified commercial tenant, together with the required certification of the number of employees and continued status as a qualified commercial tenant, means that an initially qualified microenterprise tenant could lose that status if it gains employees or financial stability over the life of the lease, or could fall into that status if it loses employees and becomes financially unstable or underfunded.

While probably not a primary consideration for the drafters of the legislation, there is a potential that an ordinary commercial tenant that initially has more than five employees but later undergoes staff shrinkage and approaches insolvency could actually claim the status of a "microenterprise" and interpose some of the statutory protections afforded to qualified commercial tenants under any of the provisions of SB 1103. This means that landlords contemplating lease nonrenewal, changes in terms, or specified enforcement actions against financially weakening tenants should consider complying with the notification and timing requirements of SB 1103 even if the tenant exceeded the five-employee limitation and was on financially sound footing at the inception of the lease. Conversely, tenants who operate failing or shrinking operations may find it in their interest to claim the status of a qualified commercial tenant by notifying the landlord to that effect before receiving a notice of nonrenewal, change of terms or rental rate, or a demand for unpaid rent or other charges triggered by a landlord anticipating problems from a deteriorating tenant.

There are no provisions in the legislation that address a situation where the tenant claims that it is a "qualified commercial tenant" but does not meet these criteria, whether its "attestation" to the contrary is intentional or by mistake. There are no provisions that give the landlord a clear "out" if the tenant claiming such status lacks one or more of the required characteristics. It is up to the landlord to thoroughly vet the claims of the tenant and determine whether it meets these criteria or not, and there are no safe harbors either way, for either party, if their claims are inaccurate. Unfortunately, this leaves both parties in a potential position of uncertainty whether the statute applies or not—a circumstance that may force a landlord to assume the tenant is covered by the statute to avoid the consequences of assuming otherwise. The risks in this situation are entirely borne by the landlord.

Due to the potential adverse consequences for landlords attempting to enforce a lease or exercise the normal rights and powers of a lessor and who inadvertently fail to satisfy the requirements of the statute, some landlords may attempt to refuse to lease to prospective tenants who may be or become qualified commercial tenants, or to obtain waivers of the provisions of the statute as a condition of entering into transactions with such tenants. This is not a surefire solution to the problems posed for landlords by SB 1103. A flat refusal to enter into transactions with potentially qualified commercial tenants may potentially expose the landlord to considerable liabilities, and most of the provi-

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sions of SB 1103 cannot validly be waived by qualified commercial tenants even if they are willing to do so.

For example, a refusal to lease to tenants who cannot negotiate in English likely would run afoul of the Unruh Act, which among other things prohibits any refusal of a business establishment to trade or do business with any person on the basis of any protected characteristic,[20] including the "citizenship, *primary language,* or immigration status" of that person.[21] The Unruh Act provides that this prohibition does not require anything of a business establishment beyond the duty to comply with other express legal requirements, and specifically does not require the business to provide documents in a language other than English except as provided in Section 1632.[22] Nevertheless, a flat refusal to negotiate with someone whose primary language is not English would run afoul of the Unruh Act, while an insistence on negotiating only in English with parties who cannot understand the language often will be neither practical nor reasonable in other ways.

In other respects, a refusal to do business with financially insecure or smaller restaurant tenants and nonprofit entities may not directly violate the law, but the result could be a loss of a substantial percentage of prospective tenants for many landlords of smaller or standalone buildings or multi-tenant properties. An exception may be the negotiation of longer-term leases, where the financial strength and creditworthiness of the tenant are legitimate grounds for rejecting a prospective tenant, and entering into such longer-term leases with qualified commercial tenants could force the landlord to comply with an onerous and rigid set of requirements for common area maintenance, tax, and operating expense pass-throughs and escalation clauses under Civ. Code, § 1059.1, which are not consistent with ordinary management practices for multi-tenant commercial properties, but which impose potentially significant penalties and liabilities on the landlord for noncompliance.

Attempting to have the tenant waive the other protections of SB 1103 also is not viable. The provisions of Civ. Code, §§ 1950.9 and 1632 (which imposes the translation requirement for leases negotiated other than in English) are expressly non-waivable and any waiver of these provisions by a qualified commercial tenant is void as a matter of public policy.[23] The other two sections of SB 1103 (Civ. Code, §§ 827 and 1946.1) contain no express waiver language, but they directly limit the landlord's right to terminate, non-renew, or change

the terms of existing leases and the effectiveness of a lease provision purporting to waive such a statutory protection enacted for the tenant's benefit is doubtful.

There is no indication that a personal guaranty or other financial assurances given by the owner of a "qualified commercial tenant" can be used to except a lease from any of the restrictions of SB 1103—the statute simply does not consider this possibility, with the result being that a common method of providing assurance to a landlord dealing with a financially weak entity or sole proprietor will be of no help to a landlord seeking to avoid the implications of a lease to a qualified commercial tenant, nor will it be of any help to a tenant in overcoming landlord hesitancy to deal with them as a qualified commercial tenant.

To summarize, there is no fool-proof way for a landlord to avoid leasing to qualified commercial tenants, nor to prevent a tenant who falsely claims it is a qualified commercial tenant (or in some cases if it merely evolves into a qualified commercial tenant), from claiming the benefits of the statute. The only protections against inadvertent failure by a landlord to comply with SB 1103 due to a failure to realize that it is dealing with a tenant that qualifies for those protections are the notification and attestation requirements imposed on tenants by SB 1103 discussed in the next section.

2. Notification and attestation requirements to claim status as a qualified commercial tenant

In addition to the required status as a "microenterprise," or as a restaurant with fewer than 10 employees or a nonprofit with fewer than 20 employees, the definition of "qualified commercial tenant" in all four parts of SB 1103 also requires that the tenant must have certified or "attested to" its qualifications in a written notice delivered to the landlord at inception of the lease or within 12 months preceding certain events or actions by the landlord.[24] While this requirement does not insulate the landlord from potentially having to comply with the statute in other ways, it does make it less likely that the landlord will undertake a course of conduct or exercise remedies in a way that violates the statute merely through inadvertence by lack of awareness that it is dealing with a qualified commercial tenant. The specific effect of the notice and self-attestation required by the statute and the effect of the tenant's giving or failing to give the notice depends on the portion of SB 1103 that is at issue, but the contents of the notification are in each case the same—the tenant must provide written notice

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to the landlord that it is a qualified commercial tenant and must include a "self-attestation" as to the number of employees at the time the notice is given.[25]

The required timing of the notice and attestation is different for leases with a fixed term as distinguished from a month-to-month, week-to-week, or other period of less than one month. For leases with a fixed term or periodic interval that is more than one month, the tenant must have given the required notice and attestation "upon execution of the lease, and annually thereafter" as of the time the "protections" of SB 1103 come into place.[26] These portions of the statute do not address what should happen if the tenant was not a qualified commercial tenant at inception of the fixed-term lease and therefore did not give the initial notice and self-attestation. One possible reading is that the tenant of a fixed-term lease can never claim the protections of the statute as a qualified commercial tenant unless it did so either at the inception of the lease or after the initial term ended and the lease continued on a month-to-month or other periodic basis of less than one month. The other possible result is that the tenant's failure to notify at the inception of the lease is simply excused when a change in circumstances results in it having qualified for the status sometime after the lease is executed, so long as it gives the required annual notification and self-attestation thereafter. The former is the better reading of the statute, but unless the statute is clarified by subsequent amendments, this issue may require litigation to resolve.

The required timing of the notice and attestation for leases that are on a month-to-month, week-to-week, or other period of less than a month is different from the requirements for longer- or fixed-term leases. For such shorter-term periodic leases, the only requirement is that the tenant must have delivered the requisite written notice and self-attestation within twelve months prior to the time the protections of the statute come into place.[27] In effect, there is no requirement that the tenant of such a short-term periodic lease must inform the landlord in advance that it is a qualified commercial tenant entitled to the protections of the statute, which means the landlord of a periodic tenancy that is for a month-to-month or shorter interval should always assume that its tenant may be or become a qualified commercial tenant and act accordingly.

Some landlords may consider requiring a written representation or warranty as to whether the tenant is a qualified commercial tenant as part of the original lease documentation. Because a person who is a qualified commercial tenant cannot, as a matter of law, waive the protections of the statute, it seems unlikely

that such a representation or warranty would be effective if the tenant would qualify at the time the representation is made. However, if the tenant is not a qualified commercial tenant at inception, and the lease is for a longer fixed term or a periodic term of more than one month, the tenant's failure to provide the requisite notice and attestation at inception of the lease should preclude a later claim by the tenant that it is a qualified commercial tenant. Thus, for such longer-term leases, an affirmative representation that the tenant is not a qualified commercial tenant because it does not meet the size, number of employees, and financial strength requirements needed to claim status as a qualified commercial tenant may be significant in case of a subsequent dispute over the applicability of the statute. This is particularly important with respect to the translation requirement of Civ. Code, § 1632, for which the tenant's remedy is to retroactively rescind the lease, as well as for the expense pass-through limitations of Civ. Code, § 1950.9, where a tenant who failed to inform the landlord that it is a qualified commercial tenant at inception may be unable for the duration of the lease to claim that status even if its circumstances change. That consideration alone would be reason for a landlord to include such a warranty in a lease with a tenant who is not obviously eligible at lease inception for treatment as a qualified commercial tenant. By the same token, the prospect of being forever barred from claiming the benefits of the statute could lead a prospective tenant to refuse to execute such a warranty, or even to falsely assert status as a qualified commercial tenant despite not meeting the other criteria at inception of the lease—in either case, raising a red flag for the landlord in dealing with that particular tenant.

D. Substantive protections afforded to qualified commercial tenants under SB 1103

The operative provisions of SB 1103 involve four discrete areas, each of which is covered by a different section of the Civil Code, with the only common thread being that each provision applies if the tenant is a qualified commercial tenant of a nonresidential property in California, but not to other nonresidential tenants of such properties.

1. The extended 30-day or 60-day notice requirement for the lessor's termination or nonrenewal of a periodic commercial tenancy under Civ. Code, § 1946.1

The usual rule under Civ. Code, § 1945 is that when a lessee remains in possession and the lessor accepts rent after the end of the term, the term of the lease

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is deemed renewed for a period equal to the previous term, but not more than a year, and in the case of a month-to-month or other tenancy where the rent is payable periodically but the term is not stated, the renewal is for successive periods equal to the interval of rental payments, not to exceed one year.[28] However, either the landlord or the tenant can terminate a lease where the term is not stated by giving written notice of termination at least equal to the interval in which rent is paid, and in any case no more than thirty days' notice is required for either party to terminate under Civ. Code, § 1946.[29] These longstanding principles were altered for residential leases earlier in this century by the enactment of Civ. Code, § 1946.1, which changed the notice periods and other requirements for a landlord to terminate or non-renew a periodic residential tenancy.

SB 1103 now replaces the usual rule of Civ. Code, § 1945 for qualified commercial tenants of nonresidential properties by adding such tenancies to the provisions of Civ. Code, § 1946.1. As a result, a periodic tenancy of a qualified commercial tenant (whether month-to-month or some other shorter periodic term) cannot be terminated by the landlord except by written notice to the tenant given at least *60 days* prior to the proposed date of termination.[30] The only exception is this: when the tenant has occupied the premises less than a year, the landlord need only give 30 days' notice.[31] In either case, the tenant can terminate by notice given to the landlord as many days before termination as the number of days in the periodic term (i.e., one month's notice for a month-to-month lease),[32] and the tenant can terminate earlier than the end of the 60-day period of the landlord's notice by giving such a notice after the landlord gives its notice of termination.[33] All of these notices must be given either in the manner provided by Section 1162 of the Code of Civil Procedure (i.e., personal service on the tenant or substitute service on a person other than the tenant who is present at the premises, coupled with mailed notice, as provided in that section for commercial tenants[34]), or else by sending a copy by certified or registered mail.[35]

The addition of qualified commercial tenant leases to Section 1946.1 has resulted in two additional mandatory notification requirements prescribed by that section for owners of commercial property. First, any notice of termination given to a qualified commercial tenant must include "information on the provisions of this section,"[36] which presumably would include the tenant's right to terminate earlier by giving notice after receiving the landlord's notice. Second, the landlord's notice must include the statutory abandoned property notice in

the same form as required for residential tenants under Section 1946.1, subd. (h).[37] While not explicitly stated, presumably the landlord could attach and incorporate by reference a full copy of the statute in the notice of termination to satisfy the first requirement, and probably should set out both that requirement and the abandoned property notice as a separate paragraph of the written notice as well.

Section 1946.1 does not prescribe any particular remedy for a landlord's noncompliance with these notice requirements. It should be assumed, however, that a failure to include the required contents, or to provide the minimum 60 days' notice where mandated by Section 1946.1, would render a landlord's notice of termination defective and ineffective to terminate the tenancy, just as a failure to strictly adhere to the mandatory notice procedures of Code of Civil Procedure Section 1162, subd. (b), would render the notice ineffective (a subject discussed at length in a recent article by this author in the January 2023 issue of the Miller & Starr Real Estate Newsalert).[38] In any case, the existence of this new statutory notice requirement will delay the process for recovering possession of premises leased on a month-to-month or holdover basis by tenants who are qualifying commercial tenants of nonresidential properties by a minimum of an additional 30 days beyond the one month's notice ordinarily required to terminate a month-to-month commercial tenancy.

2. The extended notice requirements for an increase in rent for month-to-month leases or other periodic tenancies of less than one month under Civ. Code, § 827

Under Civ. Code, § 827 as in effect prior to SB 1103, in order to effect a rent increase under a nonresidential periodic tenancy from week to week, or any period of less than a month, the landlord was only required to give the tenant notice of the change in terms for a period equal to the period of the tenancy, and in the case of a month-to-month lease, a period of 30 days, in the manner provided by Code of Civil Procedure Section 1162.[39] For residential leases, these notice periods were previously increased to a minimum of 30 days' notice for a rent increase of less than 10 percent, and 90 days' notice for a rent increase of 10 percent or greater, with the percentage increases determined cumulatively over a 12-month period.[40] Also, under Section 827, the only means of giving notice for such residential leases is not the Section 1162 process, but rather mailed notice under Code of Civil Procedure Section 1013 or personal service on the tenant, with the type of mailed notice or personal service determining the effective date the required notice periods begin to run.[41]

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SB 1103 changes the foregoing rules by providing that notice of rent increases given under periodic leases of commercial property to qualified commercial tenants are subject to the same 30-day or 90-day extended notice periods and manner of service requirements as apply to residential leases, depending on whether the rent increase is less than 10 percent or 10 percent or greater of the current rent level, as determined cumulatively over a 12-month period.[42] A qualified commercial tenant under a week-to-week or a month-to-month lease, for example, cannot have its rent increased by 10 percent or more except after a 90-day notice period has elapsed, during which the rent would continue at the same rate as before the notice was given.[43]

While determining which notice period will apply for a rent increase for a qualified commercial tenant is fairly straightforward, two additional aspects of the SB 1103 amendments to Section 827 will affect the notification process for such tenants. The first change is the requirement that landlords giving notice of a change in rental terms to qualified commercial tenants "shall *include in the notice* information on the provisions of this subdivision";[44] this presumably could be done by reciting in full the terms of Section 827, subd. (b) as part of the notice, or by including a summary of the statute in the body of the notice, with a full copy attached and incorporated by reference. The second change is to eliminate use of Code of Civil Procedure Section 1162 procedures for notifications to qualified commercial tenants, replacing them with either personal service or mailed notice under the procedures of Code of Civil Procedure Section 1013. The latter provisions are inapplicable to notices of rental increases to commercial property tenants who are *not* qualified commercial tenants, which remain governed by Section 1162.[45]

An easily overlooked effect of these two changes, among others, is that commercial property owners imposing property-wide rental increases, or otherwise giving notices to multiple commercial tenants, may have to utilize two different notification procedures—one for qualified commercial tenants (under Section 1013) and the other for tenants who are not qualified commercial tenants (under Section 1162). The differences between the two notice procedures are quite intricate and technical and will not be summarized here. However, a failure to use the correct notice process (or to include the required information in the notice) could make a rental increase notice completely ineffective,[46] and in any event the two procedures can result in different dates a notice is deemed given and received, which in turn will affect the effective date a property-wide

rent increase can be implemented for the two types of tenants of commercial property.

SB 1103 adds a further clause to subdivision (b) of Section 827, stating unequivocally that "[n]notwithstanding, any other provision of law, a violation of the provisions of this subdivision by a landlord of a commercial property does not entitle a qualified commercial tenant to civil penalties."[47] Presumably, this means the tenant cannot recover damages if the landlord fails to provide the required information about the statute, uses an incorrect notice procedure, or fails to provide the requisite period of notice before implementing a rent increase. However, an effort to evict a tenant who failed to pay the increased rent could be defended based on the landlord's noncompliance with the statute—and the limitation on "civil penalties" may not protect a landlord against a wrongful eviction claim if the landlord wrongfully attempts to terminate the tenancy for nonpayment of the increased rental amount. Moreover, a landlord who decides in lieu of an increase of gross rent to invoice increased operating expenses or other pass-throughs to a qualified commercial tenant in violation of the new provisions of Civ. Code, § 1950.9 can be subjected to severe monetary penalties including treble damages, punitive damages, and injunctive relief, as discussed in the next section of this articles.

3. The limitations on landlord pass-throughs of operating expense increases and other pass-through expenses to qualified commercial tenants under Civ. Code, § 1950.9

The changes wrought by SB 1103 in Civ. Code, §§ 827 and 1946.1 have only the limited effect of delaying the effectiveness of a landlord's change in the rental rate or nonrenewal of a periodic tenancy, and in that respect do not fundamentally alter the terms of the rental arrangements that a landlord may enforce with a qualifying commercial tenant, nor do they seek to cap or otherwise limit the amount of rent that may be charged to a qualifying commercial tenant. That is not the case with the changes implemented by Civ. Code, § 1950.9, which imposes specific restrictions on the amount, frequency, and documentation requirements that must be adhered to by a landlord who charges operating expense pass-throughs to such tenants. Importantly, Section 1950.9 applies to virtually all leases, including longer fixed-term leases, to qualified commercial tenants, and is not limited to shorter-term periodic leases as with Sections 827 and 1946.1.

Section 1950.9 applies (a) to *all leases* with qualified commercial tenants that

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are executed on or after January 1, 2025, (b) to periodic leases or rental agreements with qualifying commercial tenants for a term of less than a month (e.g., week-to-week or other interval) or month-to-month, and that are either executed *or renewed* on or after January 1, 2025, and (c) to leases executed prior to January 1, 2025, that "do not contain a provision regarding building operating costs."[48] Thus, it does not retroactively affect pre-existing longer-term leases with qualifying commercial tenants that contain expense pass-through provisions *unless they are renewed on or after January 1, 2025.* It also does not apply to any lease of nonresidential property to a tenant who is not a qualifying commercial tenant.

Of course, any periodic tenancy, whether month-to-month or for a term of less than a month, by definition will be "renewed" or else terminated by nonrenewal at some point within the first month following January 1, 2025, so the exclusion of preexisting short-term periodic tenancies is of little significance and the restrictions of the statute for such leases will come into play very soon after January 1, 2025, irrespective of whether the lease or rental agreement is executed before or after that date.

The more significant aspect of Section 1950.9 is its application to longer-term leases with qualified commercial tenants, regardless of duration, executed on or after January 1, 2025.[49] Unlike Sections 827 and 1946.1, which apply only to short-term periodic tenancies, and unlike Section 1632, which applies only to space leases in commercial zoned property, Section 1950.9 potentially applies to all commercial leases to qualified commercial tenants, including ground leases, whole building leases, and other sizeable commercial leases, and imposes direct and rigid restrictions on landlord expense pass-throughs. As a result of SB 1103, these restrictions are not subject to contractual adjustment despite the fact that they are customary and often heavily negotiated provisions in almost all significant commercial leases with all types of commercial tenants.

Where applicable, the restrictions imposed by Section 1950.9 are as to the type, amount, documentation requirements, and tenant audit rights for all "building operating costs," as defined, that are passed through by the landlord of a commercial property to qualifying commercial tenants.[50] The term "building operating costs" is broadly defined to include all "costs that are incurred on behalf of a tenant for the operation, maintenance, or repair of the commercial real property, including, but not limited to, maintenance of common areas, utilities that are not separately metered, and taxes and assessments charged by

the landlord pursuant to building ownership."[51] The reference to costs "incurred on behalf of a tenant" should not be read literally; while somewhat imprecise, the presumed effect of the definition of "building operating costs" is to cover any and all costs incurred by the landlord on its own behalf in operating and maintaining the property, whether specific to the particular tenant's premises or not, if it is intended to be passed through in the form of common area maintenance charges, operating expense escalations, or other costs incurred by the landlord and charged through to the tenants *other than* in the form of gross rent, which is not mentioned or limited in the statute.

As to all such "building operating costs," the statute imposes the following restrictions:

(1) The costs must be allocated "proportionately per tenant," either by square footage or by another method "as substantiated through *supporting documentation* provided by the landlord to the qualified commercial tenant."[52]

(2) The costs must have been incurred within the previous 18 months or be *reasonably* expected to be incurred within the next 12 months *based on reasonable estimates*.[53]

(3) Before execution of the lease, the landlord must provide the qualified commercial tenant with "a paper or electronic notice stating that the tenant may inspect any *supporting documentation* of building operating costs in accordance with the statute."[54]

(4) Within 30 days of a written request, the landlord must provide the tenant with "*supporting documentation* of the previously incurred or reasonably expected building operating costs."[55]

(5) The costs may not include "expenses paid by a tenant directly to a third party"[56] (which would appear to include costs paid by other tenants to a third party and not solely costs paid by the qualified commercial tenant to a third party).

(6) The costs may not include "expenses for which a third party, tenant, or insurance reimbursed the landlord."[57]

Most of these limitations appear self-explanatory (although the italicized term, "supporting documentation" is not, as discussed below). The gist of them

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is to require a landlord to submit to review, analysis, and potential disallowance of expense pass-throughs in a manner that is more restrictive and invasive of the landlord's management practices than are typically negotiated even by financially strong commercial tenants in arm's-length lease negotiations. If applicable as a result of the presence of one or more qualified commercial tenants, they will force landlords of multi-tenant properties, in particular, to make substantial changes in how they administer, document, and bill tenants for the common area maintenance, tax reimbursements, and other expense pass-throughs or expense escalations property-wide, in order to avoid becoming subject to the onerous penalties and liabilities of the statute.

The statute absolutely prohibits a landlord from charging any fee to recover any building operating costs from the qualified commercial tenant until the landlord provides the qualified commercial tenant with supporting documentation—a prohibition that is not stated to be dependent on whether the tenant has requested the documentation, and which implies that the documentation must be provided every time the fee is billed through or demanded by the landlord, irrespective of the lease terms governing such matters.[58] The tenant can raise any violation of this or any other part of the statute as a defense to an unlawful detainer, ejectment, or other action to recover possession that is based on "a failure to pay a fee to recover building operating costs."[59] Any waiver of any part of the statute by a qualified commercial tenant is void as a matter of public policy.[60]

Perhaps the most unrealistic and unmanageable provision of the statute is the nature of the "supporting documentation" that must be provided to a tenant in support of expense charges. Subdivision (h)(6) of Section 1950.9 defines "supporting documentation" as:

> a dated and itemized quote, contract, receipt, or invoice from a licensed contractor or a provider of services that includes, but is not limited to, both of the following: (A) A tabulation showing how the costs are allocated among tenants in accordance with paragraph (1) of subdivision (a) [which corresponds to Item (1) in the above list of requirements]. [and] (B) a signed and dated attestation by the Landlord that the documentation and costs are true and correct.[61]

It is not unusual for a commercial lease to require back-up information or to provide a tenant with the right to audit and receive adjustments for common area maintenance or other expense charges if errors are found, but it is neither common nor in most cases reasonable to require delivery of all of the back-up

information to the tenant before the tenant is obligated to pay the amount demanded. Section 1950.9 is structured to enable the tenant to withhold payment and dispute not only the amount demanded but the adequacy of the back-up information and the reasonableness of the allocation rather than to pay the sum demanded and dispute the amounts later.

These aspects of Section 1950.9, considered together, create administrative burdens and potential traps for a non-compliant landlord that are likely to discourage direct pass-throughs or escalation clauses in shorter-term periodic leases to qualified commercial tenants altogether. Instead, they should lead landlords to change the base or gross rent to such tenants through periodic rent increases under Section 827, as is generally permitted under current law. (California law generally prohibits enforcement of local rent control ordinances on commercial properties, whether enacted before or after January 1, 1988,[62] but it does permit a local agency, by ordinance, to impose a pre-termination negotiation period on landlords of commercial premises where the lease is for a term of a year or more,[63] a provision that expressly excludes shorter-term periodic tenancies including month-to-month tenancies.[64]) Indeed, Section 1950.9 seems calculated to force landlords of commercial buildings who rent to qualified commercial tenants on a periodic basis, either month-to-month or for a recurring term of less than one month, to forego any operating cost recoveries and instead periodically adjust the gross rent under the notice provisions of Section 827.

Moreover, if the administrative burdens and potential pitfalls of trying to collect building operating expenses from short-term periodic tenants who are qualified commercial tenancies were not enough to discourage them, the enforcement powers and potentially serious financial penalties for landlord noncompliance created by Section 1950.9 should lead commercial property landlords to exclude such charges altogether in leases to qualified commercial tenants. Subdivision (f) of Section 1950.9 allows the local district attorney, city attorney, or county counsel to seek injunctive relief against any person who violates any provisions of the statute,[65] and subdivision (e) gives the tenant a further remedy: a civil action against the landlord for recovery of actual damages, attorney's fees, and, in the case of willful violations or violations with oppression, fraud or malice, treble actual damages plus punitive damages.[66] There is no limitation on class actions claims for such violations, and a landlord whose primary tenant base would qualify as qualified commercial tenants should

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expect such actions to follow any material dispute over operating expense pass-throughs, whether founded on the technical procedures of the statute or the adequacy of documentation to support the amounts charged.

Unfortunately, in the effort to protect qualified commercial tenants from unfair or unanticipated expense pass-throughs, the Legislature through inadvertence has probably deprived such tenants of the ability to secure stable, long-term leases from any well-advised landlord of commercial space, particularly in multi-tenant buildings. For such leases, the commercial real estate market always includes expense pass-throughs and escalation clauses, and it is not practical for a landlord to abandon the usual triple-net or partially-net leasing terms it offers to other commercial tenants and charge a gross rent without pass-throughs or escalations to qualified commercial tenants. The statute would not preclude pre-set stepped rent increases or cost-of-living adjustments of base or gross rent over the life of a fixed-term lease or extensions of that term, but that alone is not the norm for most commercial leasing contexts, which routinely involve some form of "net rent" pricing by including operating cost pass-through or escalation clauses while maintaining competitive levels of base rent.

The restrictions of Section 1950.9 are not consistent with normal practices of commercial landlords even where the tenants have significant bargaining power and negotiate expense provisions and audit rights thoroughly at arm's length. There is simply no safe way for a multi-tenant property owner to enter into a long-term restaurant, retail, or office lease with a qualified commercial tenant under this provision without distorting or abandoning the usual triple-net or partially-net leasing terms that it offers property-wide. Landlords instead are likely to refuse to enter into longer-term leases with qualified commercial tenants in order to avoid the effects of Section 1950.9 on their overall property management and leasing programs, not to mention the adverse limitations and potential liabilities and penalties for noncompliance with Section 1950.9 if it does apply. Landlords who customarily include expense pass-throughs or escalation clauses in longer-term leases, when approached by parties who may be qualified commercial tenants, should exercise caution in reviewing the creditworthiness, financial condition, and sustainability of the business model of the prospective tenant, as well as the prospective tenant's compatibility with the existing tenant mix and operational standards of the property. Before rejecting a prospective commercial tenant solely by reason of its status as a qualified commercial tenant, they should further consider whether the prospective tenant

may have a valid basis for claiming discrimination on the basis of a protected characteristic under the Unruh Act or similar provisions of law.

Also unclear is how Section 1950.9 would apply to a single-building property or ground lease, where a standard commercial leasing transaction would typically require the tenant to pay directly or reimburse the landlord for all taxes, operating expenses, maintenance expenses, insurance premiums, and many if not all repair or reconstruction costs. The drafters of the statute may not have understood or contemplated that such leases may exist with qualified commercial tenants, but the failure to consider or exclude such leases from the onerous restrictions and mandates of Section 1950.9 is concerning. The statute on its face would prevent a landlord from requiring a qualified commercial tenant to reimburse the landlord routinely for such expenses without meeting all of the documentation and billing procedures it requires. It does not prohibit the landlord from requiring direct payment of expenses by the tenant, but it does not clearly permit this practice, and it might even be construed as preventing the recovery of such expenses if advanced on behalf of a tenant who fails to perform lease provisions requiring such direct payments.

The statute provides that it does not apply to certain business improvement district assessments under a portion of the Streets and Highways Code[67] allowing some properties in disadvantaged commercial districts to be assessed to improve conditions in the neighborhood and foster business development in those areas;[68] such assessments seem to be excluded both from the definition of "building operating costs" and from the restrictions on landlord pass-throughs to qualified commercial tenants of expenses explicitly included in the term "building operating costs."[69] With this narrow exception, a commercial property landlord who attempts to pass through building expenses to qualified commercial tenants is asking for trouble, and should probably forego them altogether and live with short-term leases with stated gross rents and the ability to raise such rents periodically by invoking the procedures of Section 827.

4. The translation requirements and rescission rights created by Civ. Code, § 1632

SB 1103's amendment of Civ. Code, § 1632, subd. (b)(8), creates a new obligation for landlords of commercial premises who negotiate leasing transactions with qualified commercial tenants in a language other than English, to provide a written translation of the documents into that language, if the language is one of five languages specified in the statute (Spanish, Chinese,

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Tagalog, Vietnamese, or Korean).[70] This requirement applies whether the landlord negotiates in that other language orally or in writing, but only if the landlord negotiates "primarily" in that other language,[71] and only with respect to "a lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement covering a nonresidential-zoned commercial space entered into with a qualified commercial tenant on or after January 1, 2025."[72]

The basic requirement of the statute is to provide the translation to the tenant and any other party signing the contract before execution of the agreement, even though only the English version of the contract is the one signed.[73] The requirement applies not only to the initial lease or other contractual document, but also to any subsequent document making substantial changes in the rights and obligations of the parties.[74] It apparently does not apply to subsequent noncontractual documents, such as rental statements or billings, although this is somewhat unclear in the statutory language.[75] It also does not require that certain elements of the English version of the contract be translated into the other language, specifically "names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make or model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation."[76]

Failure to provide the translation is per se a violation of the statute. Upon any failure to comply with the provisions of Section 1632, subdivision (k)(1) provides that "the person aggrieved" may rescind the contract or agreement in accordance with other provisions of "this chapter" of the Civil Code—a reference that is technically nonsensical but possibly a reference to the rescission provisions contained in Sections 1688 et seq. of the Civil Code, which is in an entirely different title of Division 3 of the Civil Code, and nowhere near the same chapter as Section 1632.[77] In any case, the rescission right is apparently subject to being exercised at any time over the term of the lease or other agreement. There is no safe harbor or curative provision that would eliminate the landlord's risk of rescission if it turns out it negotiated a lease with a person that was, or claimed to be, a qualified commercial tenant in a language other than English, but failed through inadvertence or otherwise to provide an accurate translation into that language before the lease or other agreement was signed.

Subdivision (d) of Section 1632 also provides that any person negotiating a lease, sublease, or rental contract described in subdivision (b) in one of the five other languages is required to provide "a notice to the tenant or lessee" in the language in which the contract was negotiated.[78] The contents of the required notice are not described in the statute. Presumably, the notice should inform the tenant, subtenant, or other leasing party of the landlord's obligation to provide a translation of the agreement or contract in the language in which it is negotiated prior to execution of the document. Failure to give the required notice is a violation of the statute and could trigger the tenant's rescission rights, although this seems excessive if the landlord in fact provides the required translation despite not giving the notice. Nevertheless, there is no exemption from the rescission right of the tenant for noncompliance with any provision of Section 1632, even if the tenant is not harmed by its failure to receive the notice.

Unlike several other types of contracts that are subject to the translation requirement of Civ. Code, § 1632, there is no exemption from the obligation to provide a translation to the qualified commercial tenant when that tenant negotiates terms of the contract through its own interpreter; the statute provides explicitly that the exemption from the translation requirement does not apply to leasing transactions with qualified commercial tenants.[79] There is also no exemption for a lease executed by a qualified commercial tenant who is represented by counsel or by some other advisor or broker in the transaction, even if that person is also fluent in both English and the other language in which the contract is negotiated. And there is no exemption from these requirements if the tenant insists on negotiating in one of the five listed languages despite the landlord's preference to negotiate only in English, regardless of which party comprehends either language better than the other.

Moreover, the statute is entirely one-sided; there is no requirement, for example, that a qualified commercial tenant who negotiates in a language other than English and who actually provides the written contract or agreement in English to a lessor of commercial space who is not fluent in English must provide a translation of the document to the landlord. The operative language of Civ. Code, § 1632, subds. (b) and (b)(8), imposing the translation requirement for nonresidential leases to qualified commercial tenants, is neutral as to whether it is the landlord or the tenant who negotiates in the other language. However, under the literal language of Civ. Code, § 1632, subd. (k)(2), the remedy of rescission for noncompliance with the translation requirement can only be exercised by a qualified commercial tenant.[80]

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In one respect, the definition of leasing transactions with qualified commercial tenants that are subject to Section 1632 is narrower than other parts of SB 1103. Subdivision (b)(8) of Section 1632 only imposes the translation requirement on a landlord when the transaction involves a "nonresidential-zoned commercial space,"[81] rather than any "commercial real property," the much broader term used in other parts of SB 1103.[82] Thus, while other provisions of SB 1103 would potentially extend to ground leasing transactions, build-to-suit transactions, and other whole-building or industrial leases of various kinds, the translation requirements of Section 1632 would seem to apply only to space leases in existing buildings that can be considered "commercial." The statute does not, however, have a specific definition of "commercial space" and the exact scope of the translation requirement therefore is a matter of interpretation.

When it applies, subdivision (j) of Section 1632 provides that the terms of the English version of the contract are the only operative terms, and the translation does not determine the rights and obligations of the parties.[83] Curiously, however, in another location, the statute also provides that "[i]t is permissible, but not required, that this translation be signed,"[84] in which event the statute does not reference the potential effect of executing the translated version on the enforcement or interpretation of the English version. Also, the statute provides that when the translation varies from the English version, that fact "is admissible as evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation,"[85] a phraseology that seems misplaced if the parties also executed the translated version of the contract, but that otherwise leaves the landlord at risk if the translation is in any way inconsistent with the English version. The statute does not provide that if the translation is executed, the translated version should prevail if inconsistent with the English version, which would seem a more appropriate result than allowing the tenant an indefinite right to rescind the transaction.

Finally, any waiver of the requirements of the translation statute, as previously mentioned, is void and unenforceable as a violation of public policy.[86] In effect, the violation cannot be remedied or excused, even if inadvertent or the product of a mistaken understanding on the part of the landlord, leaving the landlord exposed for an indeterminate period of time to a claimed right to rescind on the part of a tenant who is a qualified commercial tenant and who

negotiated in one of the five languages other than English but also signed the English version of the lease.

Conclusion

SB 1103, like many other well-intentioned pieces of legislation, is designed to protect certain tenants of commercial properties who are perceived, accurately or not, as lacking sufficient comprehension of the English language, or lacking bargaining power or cognizance of the meaning of common leasing terms, and who may in some cases be taken advantage of by the landlord as a result. Unfortunately, the legislation seems to have been drafted in a vacuum, without any recognition of legitimate, bargained-for commercial leasing terms and expectations, and without regard to the burdens and uncertainties the law creates for commercial landlords who are not engaged in the rapacious conduct the legislation seeks to address. There may be future legislative adjustments to address some of these flaws. In the meantime, owners of nonresidential properties dealing with a current or prospective tenant who appears to have the characteristics of a "qualified commercial tenant" will need to exercise special care, particularly if the lease includes standard operating expense, tax costs, or insurance pass-throughs or escalation clauses or if the tenant (or the landlord) is negotiating in a language other than English.

ENDNOTES:

[1]2024 Cal. Stats., Ch. 1015 (SB 1103), effective January 1, 2025. All Civil Code references in this article are to the code sections as amended or enacted in the chaptered bill and are as in effect beginning January 1, 2025.

[2]Civ. Code, § 827, subd. (b).

[3]Civ. Code, § 1946.1, subds. (b), (c).

[4]Civ. Code, § 1950.9.

[5]Civ. Code, §§ 827, subd. (b)(4), 1632, subd. (d), 1946.2, subd. (i), 1950.9, subd. (a)(3).

[6]Civ. Code, § 1632, subd. (b)(8).

[7]See paragraphs (1) through (4) of the uncodified recitals of SB 1103, 2024 Cal. Stats., Ch. 1015 (SB 1103).

[8]See Civ. Code, § 1632, subds. (b), (d).

[9]See Civ. Code, § 827, subds. (b)(1), (b)(5), (b)(6), (b)(7).

[10]See Civ. Code, § 1632, subds. (b)(8), (k)(2), (m).

[11]See Civ. Code, § 1946.1, subds. (a), (b), (c), (j), (k).

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[12]Civ. Code, § 1950.1.

[13]Civ. Code, §§ 827, subds. (b)(4), (b)(6), 1632, subd. (b)(8), 1946.1, subds. (a), (i), 1950.9, subds. (a), (b), (e).

[14]Civ. Code, §§ 827, subds. (b)(1), (b)(5), 1632, subd. (m)(1), 1946.1, subds. (a), (i), 1950.9, subd. (c).

[15]Civ. Code, § 1632, subd. (b)(8).

[16]Civ. Code, §§ 827, subd. (b)(7)(A), 1632, subd. (m)(1), 1946.1, subd. (m)(1), 1950.9, subd. (h)(2).

[17]Civ. Code, §§ 827, subds. (b)(1), (b)(5), 1632, subds. (b)(8), (k)(2), 1946.1, subds. (a), (b), (c), 1950.9, subds. (a), (b), (c), (d), (e), (g).

[18]Civ. Code, §§ 827, subd. (b)(7)(D)(i), 1632, subd. (m)(4)(A), 1946.1, subd. (j)(4)(A), 1950.9, subd. (h)(5)(A).

[19]Bus. & Prof. Code, § 18000, subd. (a).

[20]Civ. Code, § 51.5, subd. (a).

[21]Civ. Code, § 51, subd. (b).

[22]Civ. Code, § 51, subd. (h).

[23]Civ. Code, §§ 1632, subd. (l), 1950.9, subd. (g).

[24]Civ. Code, §§ 827, subd. (b)(7)(B)(ii), 1632, subd. (m)(4)(B), 1946.1, subd. (j)(4)(B), 1950.9, subd. (h)(5)(B).

[25]Civ. Code, §§ 827, subd. (b)(7)(B)(ii), 1632, subd. (m)(4)(B), 1946.1, subd. (j)(4)(B), 1950.9, subd. (h)(5)(B).

[26]Civ. Code, §§ 827, subd. (b)(7)(B)(ii)(II), 1632, subd. (m)(4)(B)(ii), 1946.1, subd. (j)(4)(B)(ii), 1950.9, subd. (h)(5)(B)(ii).

[27]Civ. Code, §§ 827, subd. (b)(7)(B)(ii)(I), 1632, subd. (m)(4)(B)(i), 1946.1, subd. (j)(4)(B)(i), 1950.9, subd. (h)(5)(B)(i).

[28]Civ. Code, § 1945. See 10 Miller & Starr, California Real Estate 4th, § 34:37.

[29]Civ. Code, § 1946; Civ. Proc. Code, § 1162, subd. (b). See 10 Miller & Starr, California Real Estate 4th, § 34:179.

[30]Civ. Code, § 1946.1, subd. (b).

[31]Civ. Code, § 1946.1, subd. (c).

[32]Civ. Code, § 1946.1, subd. (b).

[33]Civ. Code, § 1946.1, subd. (e).

[34]Civ. Proc. Code, § 1162, subd. (b).

[35]Civ. Code, § 1946.1, subd. (f).

[36]Civ. Code, § 1946.1, subd. (i).

[37]Civ. Code, § 1946.1, subd. (h).

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[38]See Geier, Strict Compliance with Statutory Conditions: Another Challenge for California Landlords in the Eviction Process, 33 Miller & Starr Real Estate Newsalert 131 (January 2023).

[39]Civ. Code, § 827, subd. (a).

[40]Civ. Code, § 827, subds. (b)(1), (b)(2), (b)(3), prior to SB 1103 amendments.

[41]Civ. Code, § 827, subd. (b)(1) (referencing either personal delivery or service by mail under the procedures of Civ. Proc. Code, § 1013).

[42]Civ. Code, § 827, subds. (b)(1), (b)(2), (b)(3), as amended by SB 1103.

[43]See Civ. Code, § 827, subd. (b)(5), which unequivocally states: "In all leases for commercial real property by a qualified commercial tenant, a rent increase shall not be effective until the notice period required by this subdivision has elapsed." Note also that Civ. Code, § 827, subd. (b)(3)(B) contains an exception from the 90-day notice requirement for tenants of regulated housing projects where family income changes allow for a greater than 10 percent rent increase year over year, in order to avoid running afoul of other governmental regulations of such projects. The language of subd. (b)(3)(B) has not changed to specifically exclude qualified commercial tenants from this exception, and it is not likely any such qualified commercial tenants would be occupants of such regulated housing projects subject to such regulations.

[44]Civ. Code, § 827, subd. (b)(4).

[45]Such non-qualified commercial tenants remain subject to the notice requirements of Civ. Code, § 827, subd. (a), which references only the option of service of notices under the procedures of Civ. Proc. Code, § 1162, not the procedures of Civ. Proc. Code, § 1013.

[46]See Geier, Strict Compliance with Statutory Conditions, cited in note 39, supra.

[47]Civ. Code, § 827, subd. (b)(6).

[48]Civ. Code, § 1950.9, subd. (i).

[49]Civ. Code, § 1950.9, subd. (i)(1).

[50]Civ. Code, § 1950.9, subd. (a).

[51]Civ. Code, § 1950.9, subd. (h)(1).

[52]Civ. Code, § 1950.9, subd. (a)(1).

[53]Civ. Code, § 1950.9, subd. (a)(2).

[54]Civ. Code, § 1950.9, subd. (a)(3).

[55]Civ. Code, § 1950.9, subd. (a)(4).

[56]Civ. Code, § 1950.9, subd. (a)(5).

[57]Civ. Code, § 1950.9, subd. (a)(6).

[58]Civ. Code, § 1950.9, subd. (c).

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[59]Civ. Code, § 1950.9, subd. (d).

[60]Civ. Code, § 1950.9, subd. (g).

[61] Civ. Code, § 1950.9, subd. (h)(6).

[62]Civ. Code, §§ 1954.25 to 1954.30.

[63]Civ. Code, § 1954.31.

[64]Civ. Code, § 1954.31, subd. (d)(1).

[65]Civ. Code, § 1954.31, subd. (f).

[66]Civ. Code, § 1950.9, subd. (e).

[67]Civ. Code, § 1950.9, subd. (j) (referencing Sts. & Hy. Code, §§ 36600 et seq. (the Property and Business Improvement District Law of 1994)).

[68]See Sts. & Hy. Code, §§ 36600 et seq.

[69]The exclusion from the operation of the statute is broad as to the identified assessment program, which is a business improvement district assessment for certain disadvantaged business districts, but it does not include other common assessment districts and taxes such as street improvement bonds, Mello-Roos taxes, or other assessments and taxes commonly paid with ad valorem real estate taxes, all of which are subject to the expense passthrough limitations of Section 1950.9.

[70]Civ. Code, § 1632, subd. (b).

[71]*Id.*

[72]Civ. Code, § 1632, subd. (b)(8).

[73]Civ. Code, § 1632, subd (b).

[74]Civ. Code, § 1632, subd. (g)(1).

[75]See Civ. Code, § 1632, subd. (g)(1), which provides in relevant part that "[t]he term 'contract' or 'agreement' does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account . . ." While the language does not specifically refer to leasing transactions, a fair reading of the clause following "such as" would be that the list of other types of transactions is not exclusive.

[76]Civ. Code, § 1632, subd. (i).

[77]Civ. Code, § 1632, subd. (k)(1), referencing "this chapter." This appears to be a mistake, because Section 1632 appears in Title 2 of Part 2 of Division 3 of the Civil Code—and Title 2 is not broken into "chapters," unlike other titles in Part 2 of Division 3, which deals with contracts generally. The rescission provisions of Part 2 of Division 3 are contained in Chapter 2 of Title 5 of Division 3, which is likely the provision intended for reference.

[78]Civ. Code, § 1632, subd. (d). This language of subdivision (d) has been in Section 1632 since before the amendments of SB 1103, and continues

unchanged after the amendment, but is now applicable to leases and other rental transactions with qualified commercial tenants due to the addition of such leases in subdivision (b)(8).

[79]Civ. Code, § 1632, subd. (h)(8).

[80]Civ. Code, § 1632, subd. (k)(2) ("Notwithstanding paragraph (1) [of subd. (k), which provides for a rescission remedy for noncompliance], only a qualified commercial tenant may rescind a contract described in paragraph (8) of subdivision (b) pursuant to this subdivision").

[81]Civ. Code, § 1632, subd. (b)(8).

[82]See discussion in text accompanying notes 13 to 15, *supra*.

[83]Civ. Code, § 1632, subd. (j).

[84]Civ. Code, § 1632, subd. (i).

[85]*Id.*

[86]Civ. Code, § 1632, subd. (l).

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