

Full acceleration clauses in commercial leases

November 19, 2007 - Front Section

The Mass. supreme judicial court has just upheld full acceleration clauses in commercial leases. In the surprising recent decision of Cummings Properties, LLC v. National Communications Corp. (July 2007), the court upheld a provision that in the event of a default in paying rent, not cured within the applicable cure period, the "entire balance of rent which is due hereunder shall become immediately due and payable as liquidated damages."

This is much broader than the partial acceleration clause which is commonly used. In the partial acceleration clause, the landlord may elect to have the tenant pay the difference between the total rent due for the remainder of the term of the lease less the current fair market rent for the premises for the remainder of the term of the lease.

The clause which was approved by the court is as follows: "If lessee shall default in the payment of the security deposit, rent, taxes, or any substantial invoice for goods and/or services or other sum herein specified, and such default shall continue for ten days after written notice thereof, and, because both parties agree that nonpayment of said sums when due is a significant breach of the lease, and, because the payment of rent in monthly installments is for the sole benefit and convenience of lessee, then in addition to the foregoing remedies (retaking possession of the leased premises) the entire balance of rent which is due hereunder shall become immediately due and payable as liquidated damages."

This is a major change in the remedies a commercial landlord has against a commercial tenant who does not pay rent. Landlords should consider including a full acceleration clause in their leases given the decision of the Mass. supreme judicial court in the Cummings case.

Saul Feldman is a real estate attorney at Feldman & Feldman, PC, Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540