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2025 Brings Important Legislative Amendments to California's Summary Judgment Procedure, Commercial Unlawful Detainer Procedure, and Notices/Triple Net Expense Protections for 'Qualified Commercial Tenants'

Effective January 1, 2025, California passed new legislation with important changes for (1) summary judgment/adjudication proceedings, (2) commercial unlawful detainer procedural nuances, and (3) certain notices to be given and recordkeeping/notice protections relating to triple net expenses claimed by commercial landlords against a new category of tenants known as "qualified commercial tenants."

Summary Judgment/Adjudication Proceeding Changes

Filing, opposition, and reply deadlines have been lengthened in new amendments to Code of Civil Procedure section 437c. A summary/adjudication motion must now be filed 81 days before the hearing date (changed from 75 days); opposition papers must be filed 20 days before the hearing date (changed from 14 days); and reply papers must be filed 11 days before the hearing date (changed from five days). See Code Civ. Proc., § 437c, subd. (a).

Parties now are prohibited from filing more than one summary judgment against an adverse party without leave of court, a change from the lack of a statutory limitation under the former law. See Code Civ. Proc., § 437c, subd. (a)(4).

Parties now cannot introduce new facts in a reply to a summary judgment opposition, unlike the former law which allowed new facts

and evidence in the discretion of the lower court hearing the motion. See Code Civ. Proc., § 437c, subd. (b)(4).

Unlawful Detainer Procedural Changes

Applicable to both residential and commercial tenancies, several changes have occurred in connection with a defendant's (tenant's or other occupant's) response to an unlawful detainer and "suggested" deadlines for hearings on demurrers and motions to strike.

Defendants now have 10 days, excluding Saturdays, Sundays, and judicial holidays, to respond to a complaint after service of an unlawful detainer summons and complaint. See Code Civ. Proc., § 1167, subd. (a). This is different from the prior five-day deadline to respond following service. If service was accomplished by mail or in person through the secretary of state's confidentiality program, the defendant has an additional five days to respond to the unlawful detainer complaint. See Code Civ. Proc., § 1167, subd. (b).

Under the old law, defendants had two options in responding to an unlawful detainer complaint: filing an answer or filing a demurrer. Now, a defendant may resort to using either of these two options or also file a motion to strike portions of the complaint (singularly or in conjunction with a demurrer). See Code Civ. Proc., § 1170, subd. (a).

New section 1170, subdivision (b)(1) also has some suggested deadlines for the hearing of a demurrer and/or a motion to strike brought by an unlawful detainer defendant. This was likely intended to prevent the delays that occurred in hearings during the COVID-19 pandemic when the law had no limiting date by which a demurrer had to be heard. The new "deadlines" state that a hearing on a demurrer or motion to strike must be heard not less than five court days and not more than seven court days after the filing of the motion(s). However, the new statutory provision does allow the court upon "good cause" (not defined) to order the hearing on the motion(s) to be postponed or held on a later time other than the "suggested" deadline dates.

“Qualified Commercial Tenant” Category Created and Limitations Applicable to These Tenants

The California Legislature has created a specialized tenant known as a “qualified commercial tenant.” To qualify, a tenant must satisfy dual criteria: (1) be a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees. Under Business and Professions Code section 18000, subdivision (a), microenterprise is defined as a sole proprietorship, partnership, limited liability company, or corporation that has five or fewer employees, inclusive of owners, and generally lacks access to financing or equity); and (2) has provided its landlord with written notice of its qualified status and self-attests to the number of employees. See Civ. Code, § 827, subds. (b)(7)(B), (D).

Rent Increases

For short-term tenancies such as week to week, month to month, or less than a month in duration, a landlord must provide written notice to a qualified commercial tenant of a rent increase as follows: (1) for a rent increase of 10% or less, written notice at least 30 days before the effective date of the rent increase; and (2) for a rent increase over 10%, written notice at least 90 days before the effective date of the rent increase. See Civ. Code, § 827, subdivisions (b)(2)–(3).

Termination Notices

For leases with unspecified terms or holdover tenancies creating a month-to-month situation, a landlord must provide a written notice of termination to the qualified commercial tenant as follows: (1) for a tenant occupying the premises for less than one year, a written notice at least 30 days prior to the effective date of the termination; and (2) for all other situations for a tenant occupying the premises for more than one year, written notice at least 60 days prior to the effective date of the termination. See Civ. Code, § 1946.1, subds. (a)–(c).)

Triple Net Expense Recovery

New Civil Code section 1950.9 now puts limits on a landlord's ability to charge and recoup "building operating expenses" from a qualified commercial tenant (with "building operating expenses" mirroring triple net concepts in typical California commercial leases). But section 1950.9 has restricted applicability to (1) leases executed, commenced, or renewed on or after January 1, 2025; (2) short-term tenancies discussed in the "Rent Increases" discussion above; and (3) pre-2025 leases not containing any provision regarding triple net expenses. Commercial landlords must now provide qualified commercial tenants with detailed documentation supporting the triple net expenses (dated and itemized documents from providers showing how building operating costs are allocated) and a landlord attestation that the documented costs are true/correct in nature. See Civ. Code, § 1950.9, subd. (h)(6).

But there is more beyond just the documentation requirements, with the landlord required to demonstrate as a condition of recovery and not being able to upwardly adjust unless the landlord further shows that (1) the triple net costs are proportionately allocated through an objective measure (such as square footage); (2) the triple net expenses were incurred within the last 18 months or reasonably expected to be incurred within the next year on a reasonably estimated basis; (3) before any lease is signed, the landlord provides notice that triple net expense substantiation may be inspected within 30 days of a request from a qualified commercial tenant; (4) the triple net expenses do not include expenses directly paid by the tenant to a third party (such as utilities or waste management); *and* (5) triple net expenses do not include expenses for which a third party, tenant, or insurance company made reimbursement to a landlord. See Civ. Code, § 1950.9, subds. (a)(1)–(6).

The penalties for violating the triple net expenses limitations for qualified commercial tenants are steep: (1) a landlord's violation can be raised as an unlawful detainer affirmative defense (see Civ. Code, § 1950.9, subd. (d)); (2) a landlord may be liable to the tenant in a separate civil action for actual damages, as well as discretionary attorney's fees and costs (see Civ. Code, § 1950.9, subds. (e)(1)–(2)); and (3) a landlord found to have willfully violated the statutory provisions can be held liable for treble and punitive damages (see

Civ. Code, § 1950.9, subd. (e)(3)). These statutory rights cannot be contractually waived. See Civ. Code, § 1950.9, subd. (g).

Please contact the author or any member of Frost Brown Todd's [Business and Commercial Litigation Practice](#) for more information or assistance navigating these new procedural rules and requirements.

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