

Distressed Leases, Landlords and Tenants

Real Estate Finance Association

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Look at the Lease!

- Defaults
 - Monetary Defaults – Failure to pay rent or other charges
 - Non-Monetary Defaults – Failure to insure, unpermitted assignment or subletting
- Notice required?
- Cure periods?
 - Second notice required to terminate? Possibly second notice may be statutory Notice to Quit?

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Consider Other Remedies

- For non-monetary defaults, termination may not be the best option – may not want to lose lease
 - Collection suit
 - Injunctive or declaratory relief
 - Apply security deposit
 - Consensual termination with negotiated termination fee
 - Suit under Guaranty, if any

Other Relevant Lease Provisions

- Holdover – Increased rent, indemnity?
 - Careful in accepting rent!
- Costs of collection
- Collect rent from subtenants?
- Recovery from Guarantors

Damages

- Again, look at the Lease!
 - Month to month rent, then accelerate remaining payments at Landlord's option
 - Acceleration of difference between lease rent and fair market rent (or present value of difference)
 - Acceleration of all rent and additional rent – sum of stream of payments
 - Landlord duty to mitigate damages? Does the Lease negate or limit the duty?

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Recovery of Possession

- Summary Process
 - Separate from four corners of lease
 - For monetary defaults only
 - No defenses, other than amount not owed
 - No counterclaims
 - Initiate by 14 day notice to quit – G.L. Ch. 86 §11A
 - No lease (tenant at will) – G.L. Ch. 86 §12
 - De Novo appeal to Superior Court – G.C. ch. 231, § 97

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Eviction Procedures

- Notice to Quit, on completed Court issued form, must include a fixed Entry Date (must be a Monday)
- Complaint and summons must be served by Constable or Sheriff at least 7 days (but not more than 30 days) before Entry Date
- Must file complaint on Entry Date or start over
- Answer must be filed by the following Monday (7 days)
- Hearing is second Thursday (i.e. 10 days) after the Entry Date