

SB 1103: Key changes affecting commercial tenancies in California

Qualified Commercial Tenant (“QCT”) definition:

- Microenterprises (as defined in Bus. & Prof. Code §18000(a)): a small business which (1) has five or fewer employees, including the owner, either full- or part-time; and (2) generally lacks access to conventional business loans;
- Restaurants, which are not defined by statute, with fewer than 10 employees. The statute is silent on whether the employees must be full or part time; or
- Non-profit organizations (defined pursuant to IRS Code § 501(c)(3)) with fewer than 20 employees. The statute is silent on whether the employees must be full or part time.
- Tenant must provide written notice and self-attestation of QCT status to landlord annually, unless term is for less than a month (Civil Code §§ 827(b)(7)(D)(ii), 1632(l)(4)(B), 1946.1(l)(4)(B) and 1950.9(l)(5)(B).
- Proof of QCT:
 - Tenant must provide self-attestation in writing
 - Statute is silent on challenging

4 changes: (1) Translation requirement, (2) fee for collecting CAMS, (3) rent increases notices and (4) lease termination notices.

If the landlord suspects its commercial tenant is a QCT but the tenant has not provided a self-attestation, the law does not apply. A QCT must provide an annual written notice and attestation to the landlord in order to benefit from these new laws. (Civil Code §§ 827(b)(7)(D)(ii), 1632(l)(4)(B), 1946.1(l)(4)(B) and 1950.9(l)(5)(B))

Translation Requirements

- Where a landlord and/or QCT negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, if QCT provides written notice and self-attestation of QCT status to landlord before lease is signed, then the landlord must provide a translated version of lease and other property-related agreements at the time of execution. The translation must contain every term and condition in the lease or other agreement. (Civil Code § 1632(b)(8))
- Applies to commercial leases to QCTs (Civil Code § 1632(b)(8))
- Have to provide translation even if QCT had a translator (Civil Code § 1632(h)(3))
- Only the QCT can rescind the agreement for noncompliance with translation requirements (Civil Code § 1632(k)(1)-(2))
- A landlord negotiating a lease or other property-related agreement with a QCT in one of the five specified languages must display a clear notice in that same language stating that

the business has to provide the full contract in that language. The notice must be displayed at the same time and place where the lease or other agreement is negotiated. (Civil Code § 1632(f))

- Translation may retain certain English elements of the lease or other agreement: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and 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. (Civil Code § 1632(i))
- Only applies to new or renewed leases executed after January 1, 2025 (Civil Code § 1632(b)(8))
- The translation may be signed but this is not a legal requirement. (Civil Code § 1632(i))
- Signed lease in English governs the tenancy (Civil Code § 1632(j))
- If the QCT has a translator to help them in negotiating the lease, landlord still has to provide a translation to the QCT (Civil Code § 1632(h)(3).)

Building Operating Costs

- For new or renewing leases or tenancies after January 1, 2025, new rules for landlords charging a fee for collecting building operating costs to QCTs set forth in new Civil Code § 1950.9
- Building operating costs are defined as costs that are incurred on behalf of a tenant for the operation, maintenance, or repair of commercial real property, including, but not limited to, maintenance of common areas, utilities that are not separately metered, and taxes or assessments charged to the landlord pursuant to property ownership (Civil Code § 1950.9(h)(1))
- Landlords cannot charge QCTs a fee to recover building operating costs unless:
 - Costs are allocated proportionately based on size or some other rational basis among tenants (Civil Code § 1950.9(a)(1))
 - Costs were incurred within previous 18 months or reasonably expected to be incurred within the next 12 months, based on a reasonable estimate (Civil Code § 1950.9(a)(2))
 - If the parties are entering into a new lease, landlord provides QCT a notice in writing that the QCT may inspect cost documentation upon written request (Civil Code § 1950.9(a)(3))
 - Upon QCT's written request, Landlord provides QCT with supporting documentation for costs within 30 days (Civil Code § 1950.9(a)(4))
 - "Supporting documentation" means 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) a tabulation showing how the costs are allocated among tenants,

and a signed and dated attestation by the landlord that the documentation and costs are true and correct. (Civil Code § 1950.9(h)(6))

- Landlord must supply QCT with supporting documentation (as defined above) before the landlord may charge QCT a fee to recover any operating costs (Civil Code § 1950.9(b))
- Landlord cannot change the method or formula for allocating operating costs until QCT is provided with written notice of the change in the method or formula, along with supporting documentation showing the basis for the change (Civil Code § 1950.9(c))
- Costs cannot include:
 - Expenses paid directly by tenants to third parties (Civil Code § 1950.9(a)(5))
 - Costs reimbursed by insurance or third parties (Civil Code § 1950.9(a)(6))
- Confidentiality:
 - Statute is silent and does not prohibit landlord requiring QCT to sign a confidentiality agreement
 - Consider having QCT sign a confidentiality agreement before providing info
- QCT can use landlord's failure to comply with the requirements for charging a fee to recover building operating costs as an affirmative defense in eviction cases (Civil Code § 1950.9(d))
- QCT can also recover from a landlord who fails to comply with the requirements for charging a fee for recover building operating costs:
 - Actual damages (Civil Code § 1950.9(e)(1))
 - Reasonable attorney's fees and costs (at court's discretion) (Civil Code § 1950.9(e)(2))
 - Up to triple damages for willful violations (Civil Code § 1950.9(e)(3)(A))
 - Punitive damages (Civil Code § 1950.9(e)(3)(B))
 - Local authorities can seek injunctive relief (Civil Code § 1950.9(f))
- Any waivers of these rights are void as against public policy (Civil Code § 1950.9(g))
- Changes in law apply to:
 - New and renewed leases starting January 1, 2025 (Civil Code § 1950.9(i)(1))
 - Month-to-month and shorter-term tenancies (Civil Code § 1950.9(i)(2))
 - Existing leases without building operating cost provisions (Civil Code § 1950.9(i)(3))
- Q: Is there a cap on the management fee you can charge to recover operating expenses?
- A: The statute is silent on any cap on fees.

- Q: Can a landlord call the management fee an administrative fee so the new law doesn't apply?
- A: No. Changing the name of the fee does not change the nature of the fee, which the landlord is charging to recover its operating expenses from a QCT. If the landlord wants to charge a fee, the landlord must comply with the law's requirements, regardless of what the landlord calls the fee.

Rent Increase Notice Requirements for QCTs

- Does not apply to rent increase scheduled during the lease term (Civil Code § 827(b)(5))
- Applies to month-to-month tenancy created after lease expires (Civil Code § 827(b))
- Applies to tenancy which starts month-to-month or week-to-week (Civil Code § 827(b))
- For increases of 10% or less (cumulative during a 12-month period): 30 days' notice required (Civil Code § 827(b)(2))
- For increases over 10% (cumulative during a 12-month period): 90 days' notice required (Civil Code § 827(b)(3)(A))
- Rent increase is not effective until the notice period expires (Civil Code § 827(b)(5))
- Any notice of QCT rent increase must include information relating to the provisions of Civil Code § 827 which concern proposed rent increases (Civil Code § 827(b)(4))
- No civil penalties if landlord violates the notice provisions of rent increases for QCTs (Civil Code § 827(b)(6))

Termination Notice Requirements 1946.1

- Landlord must give QCTs 60 days' notice to terminate a month-to-month tenancy (Civil Code § 1946.1(b))
- For QCT tenancies less than one year, 30 days' notice is required (Civil Code § 1946.1(c))
- QCTs must give notice for a period at least as long as their periodic tenancy (Civil Code § 1946.1(e))
- QCT tenancies for an unspecified term are deemed renewed at the end of the term implied by law (i.e., month-to-month, week-to-week, etc.) unless one of the parties provides written notice of intent to terminate (Civil Code § 1946.1(a))
- Any waiver of these provisions is contrary to public policy and therefore void and unenforceable (Civil Code § 1946.1(l))