

COMMERCIAL REAL ESTATE
THERE IS NO STANDARD “GOOD GUY GUARANTEE”

If your entity has limited liability, such as a limited liability company or corporation, it is likely that, unless your entity is a national chain or a Fortune 500 Company, at the end of preliminary discussions regarding the terms and conditions of your entity’s commercial lease, your broker will tell you that the landlord requires the “standard good guy guarantee.” The broker then typically explains that this simply means that since your entity has limited liability, the landlord requires an individual or business entity of substance to guarantee the obligations of the tenant under the lease, but only for as long as the tenant stays in possession of the leased premises, thereby making the tenant a “good guy”, i.e., one that can assure the landlord that the tenant will comply with all of its lease obligations during the period that the tenant actually occupies the leased premises.

As the tenant’s representative, you think that such an arrangement sounds fair and you agree to identify to the landlord an owner or other principal of the tenant or its corporate parent who will provide such guarantee. You believe that, after all, it’s only fair that the landlord receives the benefits to which the landlord is entitled, at least until the leased space is returned to the landlord.

Commercial tenants, and their brokers, should be aware that there is no such thing as a “standard good guy guarantee.” It is best that the scope of such guarantee be limited and agreed upon before the proposed lease and guaranty are drafted. The failure to do so, can lead to significant financial loss and risk, as well as lost opportunity time.

Though the typical commercial tenant believes that the good guy guaranty covers only the payment of monthly installments of base or fixed rent, and perhaps periodic recurring tenant contributions in the nature of real estate taxes or operating expenses, initial drafts of most proposed good guy guarantees that we have seen cover all of the obligations of the tenant under the lease. Such obligations include all rent and additional rent. Most leases define additional rent as all sums of money, other than base rent or fixed rent, which shall become due and payable from tenant to landlord. Included might be the obligation of the tenant to indemnify the landlord against losses and damages, including uninsured liabilities of the tenant to the landlord, and the cost of restoration of the leased premises to the condition they were in on the date of the lease.

Accordingly, it is important that at the outset of lease discussions, or at least no later than the first time the tenant learns that the landlord will require a good guy guarantee, a prospective tenant and its broker define and limit the scope of any good guy guaranty. Otherwise, your attempts to limit your personal liability by having formed an

entity with limited liability and having the entity sign a lease, may fall short and the good guy guaranty will continue to expose the guarantor, in most cases a principal of the tenant, to significant obligations under the lease.

If you would like to learn more about this or other important U.S. real estate topics please do not hesitate to contact us by email or telephone. We remain at your entire disposal to answer any questions you may have and to assist you with your commercial lease. We will work with you to find solutions tailored to your needs.