

## Issues At Surrender Of Leases For Warehouse And Light Industrial Properties

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In dealing with warehouse or light industrial properties, leases are often in play. As either a landlord or a tenant, the terms of those leases govern your rights and obligations pertaining to the property and are vitally important to your business operations. While you may mostly focus on the primary lease terms such as economic terms like the rent amount or the costs of common area maintenance and the term of the lease, in warehouse and light industrial leases, maintenance and repair requirements, in addition to the rights to personal property and trade fixtures, can be ripe for disputes. Leases come to an end, whether by expiration or termination. Sometimes these disputes lie in wait until the end of the lease and the surrendering of the premises by tenant back to the landlord.

Often times, these disputes involve: (i) the tenant's obligations with respect to the maintenance, repair, replacement, and restoration of the premises and other portions of the building in which the premises is located or (ii) the right of the tenant to remove personal property and trade fixtures from the premises.

Most often in commercial leases, the tenant's maintenance, repair, replacement, and restoration obligations are limited to nonstructural elements of the premises. The landlord is most often responsible for the maintenance, repair, replacement, and restoration of the structural elements of the premises and the building, including, for instance, the roof. The governing language in the lease is critical on this issue. What must you maintain, repair, replace, or restore? Is there a standard to which it should be repaired, replaced, or restored? Does the other party have to give approval for such work before it is performed? To be clear on the parties' obligations, all of these questions should be addressed in the lease.

In negotiating leases for warehouse or light industrial space, there is a tendency for landlords to attempt to shift the risk of the maintenance, repair, replacement, and restoration obligations of certain structural elements, such as the roof, to the tenants. While this may not appear to be an important issue at first blush, it could end up being a huge monetary obligation for the tenant if the tenant is ultimately responsible for the costs of such maintenance, repair, replacement, or restoration.

Understanding which party is required to maintain, repair, replace, or restore what portions of the leased premises (and the building) is important so that you know what you are signing up for. Also critically important when performing any such work is knowing the standard required for such work. For the benefit of all parties to the lease, it is vital that such standards are clarified in the lease so that the parties can comply with such standards at the front end rather than asking for forgiveness at the end of the leasing relationship or worse, a fight.

As it is typical for tenants to place personal property and trade fixtures on the leased premises, another important issue at the surrender of the lease is the right to remove personal property and trade fixtures from the premises. Typically, tenants have the right to remove personal property and unattached trade fixtures from the premises, but not any attached trade fixtures because removal might damage the premises. It is critical for parties to a lease to discuss and determine at the front end how important it will be for the tenant to be able to remove any personal property and “attached” or “unattached” trade fixtures at the surrendering of the lease. If this is important to the tenant, this right will need to be negotiated into this lease or the tenant risks not being able to take possession of valuable business assets at the end of the lease term. Even if a landlord is willing to allow removal, the landlord will almost certainly want to require the tenant to repair any damage caused by the removal of any personal property and trade fixtures. These issues should all be addressed in the lease language and a discussion at the outset goes a long way to set clear expectations and avoid nasty, expensive disputes at the end of the lease. As a landlord or a tenant, whether you are negotiating a lease at the front end or looking at your lease when a dispute has arisen, these terms can make substantial differences in your rights and obligations. Taking a few minutes to analyze these issues or, even better, reaching out to an attorney to review these issues before signing the lease, can save significant time and money in the long run. In the case of a tenant, this will also allow the tenant to focus on running its business instead of dealing with contested disputes