

Legal Protections for Tenants in Commercial Property Leases



Memorandum Report 2024-9

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Introduction

A lease for real property is a binding contract between a landlord and a tenant agreeing that the landlord will allow the tenant to take possession of a space, typically for a set amount of time, for a fee. People who rent for the purpose of living in a space have “residential” leases and people who rent for the purpose of operating a business have “commercial” leases.

Most state and local jurisdictions have consumer protection laws regarding residential leases. These laws are based on the theory that a landlord is a businessperson with more knowledge than a tenant and has the potential to exploit the knowledge to their benefit when negotiating the terms of a lease. Most state and local jurisdictions do not have similarly extensive legal protections for tenants with commercial leases. The theory is that both parties to a commercial lease – the landlord and the tenant – are businesspeople who have knowledge to protect their own interests in negotiations.

The Council asked the Office of Legislative Oversight (OLO) to examine the extent of legal protections for commercial tenants in Maryland and Montgomery County. The Council also asked OLO to examine whether other jurisdictions have taken steps to establish legal protections for commercial tenants. In this report:

- **Part A** provides background information on commercial leasing;
- **Part B** describes local and state legal protections for residential and commercial tenants;
- **Part C** summarizes legal protections for commercial tenants in other jurisdictions;
- **Part D** identifies Legacy Business Programs that provide leasing assistance;
- **Part E** describes actions in two jurisdictions related to commercial rent control;
- **Part F** summarizes the major take-aways from the report; and
- **Part G** acknowledges individuals who contributed to this report.

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Global Findings. OLO found that compared to legal protections for residential tenants, there are very few protections for commercial tenants in Maryland law. OLO did not find any commercial tenant protections in Montgomery County law.¹

This report summarizes legal protections for commercial tenants in seven states (including Maryland) and three cities (listed below). The laws provide a variety of protections to tenants, including establishing conditions if a provision is not addressed in a written lease; prohibiting enforcement of certain types of lease provisions because they are deemed contrary to public policy; and explicitly prohibiting certain actions by a landlord.

Table 1 describes the general type of protections that OLO found for commercial tenants in these jurisdictions. Note, OLO did not examine laws in all 50 states, but found many states (and local jurisdictions) with no readily identifiable legal protections for commercial tenants in their laws.

Table 1. Categories of Commercial Tenant Protections in State and Local Laws

Statutory Protections	Establishing lease terms when not in lease document	Requiring or prohibiting certain landlord actions	Specific types of lease provisions void/unenforceable	Requiring terms in a lease	Prohibiting waiver of tenant's rights in lease	Gives tenant a right to sue landlord for violation of law
Maryland	✓		✓			
Massachusetts			✓			
Montana	✓					
New York		✓	✓			
Texas	✓	✓		✓		
Virginia	✓	✓				
Wisconsin	✓			✓		
Los Angeles		✓			✓	✓
New York City		✓				✓
Philadelphia		✓				✓

OLO also looked at jurisdictions that have Legacy Business Programs – programs that highlight and promote businesses that have been in a jurisdiction for an established period of time and

¹ Most jurisdictions including Maryland and Montgomery County have codified protections against unlawful discrimination based on, e.g., race, ethnicity, color, sex, sexual orientation, gender identity, religion, etc. in property transactions, including commercial leasing. Because the focus of this report is on jurisdictions that provide legal protections for commercial tenants with respect to the lease relationship between landlord and tenant, this report does not include a discussion of anti-discrimination laws.

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contribute to the character of a neighborhood or community in the jurisdiction. While Legacy Business Programs typically provide businesses with promotional exposure in the community, some programs also include support through grants, business education support, and/or legal support.² OLO found examples of Legacy Business Programs that provide businesses with some access to resources to help with commercial leases in three government-led programs: in Boston, MA, Los Angeles, CA, and San Francisco, CA.

A. Commercial Leases

A **lease agreement** is “an agreement between parties, creating mutual obligations enforceable by law.”³ Lease agreements can be made for both **personal property** (e.g., tangible items – a car, a moving truck, banquet tables) and **real property** (land and the buildings on it). A **lease for real property** is “an agreement between the landlord and tenant regarding conveyance, term, use, and enjoyment of the property, payment of rent, and other specific rights and obligations concerning the property.”⁴

Leases are a type of contract where one party (typically the landlord) may have more knowledge and experience related to negotiating lease terms. Given the potential for uneven knowledge and resources among parties to a lease, most state and local governments have enacted laws to protect tenants entering into *residential* leases. Note that residential leases are for a person’s shelter – considered a fundamental basic need. Most states have taken a more hands-off approach to legal protections for commercial tenants reasoning that the knowledge bases of a commercial landlord and tenant are more equal because a tenant in a commercial lease is also a business (or businessperson).

Commercial Lease Elements. Numerous legal and real estate sources describe the “essential” elements that should be included in a commercial lease.⁵ **Table 2** on the next page summarizes typical key elements.

² “[Legacy Businesses](#),” DC Preservation League.

³ “[Contract](#),” Cornell Law School Legal Information Institute (LII).

⁴ Douglas M. Bregman, *Maryland Landlord-Tenant Law: Practice and Procedures* § 2.05 (Mathew Bender 5th ed.).

⁵ See, e.g., Susan Buckner, [Commercial Lease Agreement Overview](#), Findlaw; “[Top Ten Essential Elements of a Commercial Lease](#),” on Wonder.Legal; Jennifer Post, “[Property Leases: What SMBs Need to Know](#),” *Business News Daily* (updated Feb. 15, 2024).

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Table 2. Comment Elements in a Commercial Lease (L=Landlord, T=Tenant)

Lease Element	Description
Parties	Names of the L and T
Lease Term	Length of the lease; starting/end dates, if known
Premises Clause	Describing the space, including bathrooms, common areas, kitchen area, parking
Use Clause	Defining how T can use the space
Rent Amount	Cost for use of the space during the tenancy
Rent payments	Amount? Due monthly? Quarterly? Yearly?
Rent increases/escalation	How often? How computed?
Security Deposit	Amount? Allowable uses? Terms of return?
Utilities, Maintenance, Code Compliance, Taxes	Which party is responsible for each?
Alterations and Improvements to Property	What is allowed? Who can make? Is removal required at end of lease?
Assignment and subletting	Is it allowed? L agreement required?
Exclusivity Clause	Is L prevented from renting to a competitor of T?

Several commercial lease elements differ in practice from residential lease elements. For example:

Property Use. Residential landlords and tenants understand that rental of a residential property is for the purpose of a tenant living in the dwelling on a property. Rental of commercial property differs because the use of the property depends on the tenant’s intended business use. Commercial property leases typically include use clauses that state the purpose for which the property can be used. However, a jurisdiction’s zoning or land use laws may restrict how a specific property can be used. If a commercial tenant is not aware of applicable zoning restrictions, the tenant could sign a lease intending to use the property for a particular purpose and subsequently discover that that the law does not allow use of the property for that purpose. Most jurisdictions do not have laws requiring a prospective commercial landlord to disclose relevant zoning or land use information to a tenant before signing a lease.⁶

Rent. Residential rent is typically set as a fixed amount of money per month for a property and a residential lease document typically identifies whether the landlord or tenant is responsible for paying utility costs. Commercial rent is typically calculated on an annual basis using a formula of the square footage of the rental space multiplied by a rate per square foot (e.g., 2,500 sq. ft. x

⁶ See, e.g., Don Catalano, “[Commercial Lease Clause Guide: Must Haves to Dangerous Traps](#),” iOptimize Realty (Feb. 28, 2020).

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\$30.00 per sq. ft. = \$75,000 annual rent). This “base rent” amount may be broken up into periodic payments (e.g., monthly, quarterly). For an annual base rent amount of \$30,000, for example, rent would be \$6,250 per month if paid monthly or \$18,750 per quarter if paid quarterly.

Additionally, in some commercial leases, the tenant may pay a portion of (or all) property taxes, insurance, and/or property maintenance costs, including costs for maintaining common areas in a building that other tenants also use (e.g., bathrooms). There are many types of commercial leases that differ based on the types of expenses a tenant is responsible for paying in addition to rent.

Table 3 identifies typical commercial lease types and expenses that a tenant pays under each.

Lease Terms. Most residential leases are for one year or maybe two years. Commercial lease terms, on the other hand, may be short term or long term and each type has advantages and disadvantages for tenants and landlords. A commercial lease of three to five years or longer is generally considered a long-term lease.

Short-term leases can provide a business tenant flexibility if their business needs are likely to change in the short term. Some prime business locations may only be offered through a short-term lease, giving the landlord more flexibility to change tenants more frequently. At the same time, rental rates can be higher in short-term leases to offset risk to the landlord of having to renegotiate leases more frequently. Increased risk for the landlord may also give tenants less negotiating power in a short-term lease.

A long-term lease can increase a tenant’s risk by tying them to a single location for a longer period of time, providing less flexibility. A tenant may also assume more responsibility for maintenance and repair costs in a long term lease. On the other hand, landlords may offer a lower rental rate for a long-term lease.⁷

Maintenance Costs. Another commercial lease element that often differs significantly from residential leases is responsibility for maintenance costs. In residential leases, the landlord typically is responsible for the cost of major property maintenance, such as appliances (including repairs), roofs, windows, renovations, etc. In commercial leases, the tenant may be responsible for a portion of maintenance costs (ongoing and/or other) for the rented space and for common spaces in the building (e.g., lobbies, hallways, bathrooms). How costs are apportioned between a commercial landlord and tenant would be described in the lease document.

Table 3 on the next page lists common types of commercial leases, costs for which tenants are responsible, and the common types of commercial property associated with each lease type.

⁷ See, e.g., Don Catalano, “[Pros & Cons to Signing a Long-Term Commercial Lease](#),” iOptimize Realty (Nov. 16, 2020).

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Table 3. Typical Commercial Lease Types and Expenses by Property Type

Lease Type	Expenses	Most Common Property Type(s)
Gross Lease	Tenant pays rent, landlord pays all operating expenses	Office
Modified Gross Lease	Tenant pays rent plus a percentage of yearly operating expenses	Office
Net Lease	Tenant pays rent, a portion of taxes, insurance, and maintenance	Industrial, Retail
Singe Net Lease	Tenant pays rent and all property taxes	Industrial, Retail
Double Net Lease	Tenant pays rent, taxes, and insurance	Industrial, Retail
Triple Net Lease	Tenant pays rent, taxes, insurance, and maintenance costs	Industrial, Retail
Absolute Net Lease	Tenant pays rent, building expenses, structure/roof upkeep/repairs	Industrial, Retail
Percentage Lease	Tenant pays rent and a percentage of their monthly revenue	Retail

Source: "[A Tenant's Guide to Calculating and Negotiating Commercial Base Rent](#)," Allegro Real Estate Brokers & Advisors

B. Maryland and Montgomery County Law

The Maryland Code has several sections that provide legal protections for commercial tenants. However, they differ significantly from the types of protections in Maryland and Montgomery County law for residential tenants. For illustration, this section begins with an example of legal protections provided in Maryland and Montgomery County law for *residential tenants* (**Table 4**), followed by a summary of state law provisions protecting commercial tenants.

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Table 4. Examples of Residential Tenant Legal Protections in Maryland Code and Montgomery County Code (L=Landlord, T=Tenant)

Lease Document

State Law

- Written lease typically required
- Must state L's and T's obligations for gas, heat, electricity, water, repair of premises

County Law

- L must provide each prospective T a copy of a proposed lease
- Lease cannot contain waiver of L's liability for damage due to L's negligence or violation of laws
- Lease cannot waive T's rights or protections outlined in County law
- L must allow for lease termination w/ 30 days' notice due to, among other things:
 - Involuntary change of employment from D.C., Maryland, and Virginia
 - Death of major wage earner
 - Unemployment
 - T or T's child subject to domestic violence
 - L's harassment of T or violation of T's privacy rights
 - Under certain circumstances, L fails to fix violation of law immediately affecting health and safety of T
 - "Other reasonable causes beyond the tenant's control"

Security Deposit

State Law

- Limited to maximum of two month's rent
- Receipt required from L that includes specific info outlined in law
- L liable for \$25 to T for not providing written receipt
- L must return deposit w/in 45 days after end of tenancy minus acceptable costs

Lease Term

County Law

- L must offer T a lease with a two-year term at the outset and at renewal unless L includes a statement of reasonable cause with the lease for not doing so

Rent

State Law

- L must give T a receipt for rent payment if paid in cash or if T requests receipt
- Rent increase typically requires 90 days written notice from L
- Penalty to T for late payment of rent cannot exceed 5% of rent amount

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Table 4. (continued)

Condition of Rental Property

County Law

- L must keep building/grounds/facilities clean, sanitary, and safe; must maintain electrical, plumbing, other “facilities and conveniences” in good working order; must supply both water and hot water
- L must display in prominent public place a sign in English, Spanish, French, Chinese, Korean, Vietnamese (and other languages as directed) about (1) filing a complaint under County L-T law and (2) retaliatory practices prohibited by law

Evictions

State Law

- Covered individuals (income-based) entitled to access legal representation in eviction cases
- L cannot evict tenant in Montgomery County for:
 - Filing complaint against L w/ public agency
 - Filing a lawsuit against L
 - Participating in a tenants’ organization

Consumer Protection Act

State Law

- Protects against unfair and deceptive procedures by landlord during process of leasing property

Sources: MD Code Ann., Real Property §§ 8-203, 8-203.1, 8-205; 8-206, 8-208, 8-209, 8-214; 8-901, 8-902; MD Code Ann., Commercial Law § 13-102; Montgomery County Code (MCC) §§ 29-27, 29-28, 29-30, 29-35, 29-35A

Commercial Tenant Protections in Maryland Law. In its research, OLO identified some state code sections with protections that benefit commercial tenants. The following are summaries of sections from the Real Property Article in Maryland Code Annotated.⁸

§ 8-105 – Validity of exculpatory clauses

Any provision in a lease that releases a landlord from all liability for injury or damage on the leased property due to negligence or misconduct of the landlord is void because it is against public policy.

§ 8-107 – Statute of limitations

In most circumstances, if a landlord does not demand payment for rent for more than 20 years, the landlord loses the right to the rent and cannot bring an action against a tenant for the rent.

⁸ See MD Code Ann., [Real Property](#).

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§ 8-109 – Covenants for perpetual renewal

If a lease has a covenant for perpetual renewal of the lease and a tenant has retained uninterrupted possession of the property for 12 months after the lease expires, there is a presumption that the lease was renewed under the prior terms of the lease.

§ 8-112 – Lease ends for fire or unavoidable accident

If the improvements on a property that is rented for less than seven years “become untenable by reason of fire or unavoidable accident,” then the tenancy ends on the day of the fire or unavoidable accident.

§ 8-113 – Covenant or promise by tenant to leave premises in good repair

A covenant in a lease that requires a tenant to “leave, surrender, or yield” a property “in good repair” at the end of a lease does not require a tenant to rebuild any buildings destroyed by fire or destroyed “without negligence or fault on the tenant’s part.”

§ 8-114 – Right of tenants to remove fixtures

If a tenant adds fixtures to a property and renews a lease of the property without interruption, the tenant does not lose the right to remove the fixtures at the end of the lease.

§ 8-501 – Notice period for tenant to terminate tenancy

The notice period in a lease for a tenant to terminate the lease cannot be longer than the notice period required of the landlord to terminate the lease.

Protection in Case Law. In addition to the statutes above, some legal precedents are established in cases decided by courts. In 1980, the Supreme Court of Maryland ruled in *Millison v. Clarke*⁹ that a landlord has a duty to mitigate damages if a commercial tenant leaves a property before the end of a lease. Typically, a tenant is required under a lease to pay periodic rent to the landlord throughout a tenancy. If a tenant leaves a property before the end of the tenancy, the requirement to pay rent does not end and the tenant may be liable for the remainder of the rent due during the tenancy. However, a landlord has a duty “to exercise reasonable diligence” to mitigate – to lessen – their damages. This typically means that the landlord needs to make a reasonable effort to re-rent the property. For example, if a tenant leaves a property four months before the end of a tenancy and the landlord is able to re-rent the property for last two of those months, the tenant may only have to pay the landlord an amount equal to the rent for the intervening two months when the property was not re-rented.

⁹ *Millison v. Clarke*, 287 Md. 420 (1980).

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C. Legal Protections for Commercial Tenants in Other Jurisdictions

Several state and local jurisdictions also have codified protections for commercial tenants in their laws. Note that OLO did not examine the laws in every state and local jurisdiction. The examples of laws included in this section show how states have taken different approaches to commercial tenant protections.

For example, laws in several states establish lease provisions if a provision is not included in a written commercial lease (e.g., establishing length of notice to terminate a lease if not stated in the lease document). Some laws prohibit the enforcement of certain types of lease provisions because they are deemed contrary to public policy (e.g., provisions where a tenant agrees to waive certain rights established in law). Some laws explicitly prohibit certain actions by a landlord (e.g., prohibition on harassment).

Table 5 identifies the jurisdictions included in this section and identifies the types of legal protections in the jurisdictions.

Table 5. Categories of Commercial Tenant Protections in State and Local Laws

Statutory Protections	Establishing lease terms when not in lease document	Requiring or prohibiting certain landlord actions	Specific types of lease provisions void/unenforceable	Requiring terms in a lease	Prohibiting waiver of tenant's rights in lease	Gives tenant a right to sue landlord for violation of law
Massachusetts			✓			
Montana	✓					
New York		✓	✓			
Texas	✓	✓		✓		
Virginia	✓	✓				
Wisconsin	✓			✓		
Los Angeles		✓			✓	✓
New York City		✓				✓
Philadelphia		✓				✓

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1. Commonwealth of Massachusetts

Tenant’s Ability to Pay Rent Due and Landlord’s Requirement to Accept Payment. In certain circumstances when a commercial tenant has not paid rent, a landlord may give 14 days’ notice for the tenant to leave the property. If the tenant pays the rent due with interest and costs before the last day, the landlord cannot force tenant to leave the property and must accept the rent payment.¹⁰

Prohibition on Waiver of Landlord Liability. Any provision in a lease is void and unenforceable if the effect would be to waive the liability of the landlord for injury or loss that occurred due to fault or negligence of the landlord.¹¹

Building Code Violation Precludes Defense for Landlord. If a tenant is injured due to a “defect” in a common area of a building that constitutes a building code violation and existed at the beginning of the tenancy, a lease provision that would absolve the landlord of liability for the injury is void and unenforceable.¹²

2. State of Montana

In its research, OLO found some states with statutes addressing commercial leasing that were originally adopted in the late 1800s or early 1900s. The language in these statutes suggests the most common type of commercial leases at the time were leases of land for farming. Montana’s statutes regarding commercial leases fall into this category and the provisions that may protect tenants are described below. OLO found similar statutes in the Kansas and Louisiana codes.

Term of Lease When None Specified. If a commercial lease document does not specify a term, it is presumed to be for one year.¹³

When Rent is Due. For leases under one year, if a commercial lease does not state when rent is due, rent is due at the end of the tenancy.¹⁴

Failure of Landlord to Repair. If damage to the premises occurs that the landlord would be obligated to repair and the landlord receives reasonable notice and fails to make the repairs, the

¹⁰ Ann. Laws of Mass. ch. 186 § 11A.

¹¹ Ibid. 186 § 15.

¹² Ibid. ch. 186 § 15E.

¹³ Mont. Code Ann. § 70-26-201.

¹⁴ Ibid. § 70-26-202.

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tenant may make the repair and deduct the cost from rent if the cost does not exceed one month's rent, or the tenant may vacate the property and terminate the lease.¹⁵

Renewal of Lease. If a tenant maintains possession of a commercial property after the expiration of a lease and the landlord accepts rent from the tenant, the lease is presumed to be renewed with the same lease terms and period, not to exceed one year.¹⁶

Notice to Terminate. If a commercial lease document does not specify a term, the lease is presumed to renew (described above) unless a party gives notice to terminate the lease. If not specified in the lease, the deadline for notice must be as long as the lease term itself, not to exceed one month.¹⁷

Rights of Tenant to Resources. If a lease does not specify otherwise and if the tenant is not holding over on an expired lease, a tenant is entitled to “take the annual products of the soil, and work mines and quarries open at the commencement of the tenancy and may cultivate and harvest the crops growing at the end of the tenancy.”¹⁸

3. New York State

Unconscionable Lease or Clause. A court can refuse to enforce or can limit application of a lease or a lease clause if the court finds the lease or clause was unconscionable at the time the lease was made.¹⁹

Harassment by Landlord. It is illegal for a landlord of a building that is (or was) ever used for manufacturing or warehouse purposes to harass a tenant with the intention of causing the tenant to vacate the property or to waive a right under the lease agreement.²⁰ A tenant subjected to harassment can apply to the NY Supreme Court for a temporary or permanent injunction or a restraining order. Any provision in a lease that has the tenant waive their rights under this section of the law is void as contrary to public policy.

¹⁵ Mont. Code Ann. § 70-26-203.

¹⁶ Ibid. § 70-26-204.

¹⁷ Ibid. § 70-26-205.

¹⁸ Ibid. § 70-26-206.

¹⁹ NY Consolidated Law, Real Property, § 235-c.

²⁰ Ibid. § 235-d.

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Prohibited Lease Condition. State law prohibits enforcement of any lease provision requiring the tenant to waive the right to bring a declaratory judgment action against the landlord for breach of the lease.²¹

4. State of Texas

Prohibitions on Landlord Action. If a tenant pays for utilities directly to a utility service, a landlord cannot cause interruption of the utility service except due to “bone fide repairs, construction, or an emergency.”²² A landlord cannot prevent a tenant from entering a leased premises, except due to: 1) repairs, construction or emergency; 2) removing contents if tenant has abandoned premises; or 3) changing locks if tenant has not paid at least some portion of rent.²³ If a landlord violates these prohibitions, a tenant can recover possession of the premises or terminate the lease. In addition, the tenant can recover the cost of actual damages, one month’s rent, or \$500, whichever is greater, plus attorney’s fees, and court costs.²⁴ However, provisions in the lease supersede these protections if there is a conflict between the two.²⁵

Security Deposits. A landlord must return a security deposit within 60 days of the tenant leaving the premises and the tenant providing a forwarding address.²⁶ The law allows a landlord to retain part or all of a security deposit for costs due to damage to the premises or charges that the tenant is liable for under the lease.²⁷ However, a landlord cannot retain part of a security deposit due to normal wear and tear on a premises.²⁸ If a landlord retains part of a security deposit, in most instances the landlord must provide a written description and an itemized list of costs deducted from the security deposit to the tenant and any remaining amount of the security deposit.²⁹ The landlord is not required to provide the itemized list or return the security deposit if the tenant does not provide a written forwarding address to the landlord. However, the tenant does not forfeit their right to a refund of the security deposit for failure to provide a written forwarding address.³⁰

A landlord who fails to return a security deposit in bad faith can be liable for: 1) \$100; 2) three times the amount of the security deposit wrongfully withheld; and 3) attorney’s costs. A landlord who does not provide a written description and itemized list of damages and charges forfeits the

²¹ Ibid. § 235-h.

²² Tex. Property Code § 93.002(a).

²³ Ibid. § 93.002(b).

²⁴ Ibid. § 93.002(g), § 93.003.

²⁵ Ibid. § 93.002(h).

²⁶ Ibid. § 93.005(a).

²⁷ Ibid. § 93.006(a).

²⁸ Ibid. § 93.006(b).

²⁹ Ibid. § 93.006(c).

³⁰ Ibid. § 93.009.

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right to any portion of the security deposit and cannot file a lawsuit against the tenant for damages to the premises. A landlord who does not return a security deposit within 60 days is presumed to have acted in bad faith.³¹

Charges. In order to assess a charge against a tenant (excluding rent or cost of damages), the charge amount or method for calculating the charge must be stated in the lease agreement.³²

5. Commonwealth of Virginia

Notice to Terminate Tenancy. In a year-to-year tenancy of a commercial property, either party may terminate the tenancy with three months' written notice prior to the end of a year of the tenancy. In a month-to-month tenancy, either party may end the tenancy with 30 days' written notice unless the lease agreement provides a different notice period.³³

Impact of Building Destruction. Except in limited circumstances, if a leased commercial property is destroyed by fire or otherwise in whole or in part and not due to the negligence of the tenant, a lease agreement to pay rent cannot be enforced. Similarly, a lease agreement to pay rent cannot be enforced if a tenant is deprived of possession of a property "by the public enemy."³⁴

Landlord Obligations re: Security Systems. A landlord of a nonresidential property cannot unreasonably withhold consent for or delay the installation of a security system for the property.³⁵

6. Wisconsin

Form of Rental Agreement. A lease for longer than a year is not enforceable unless it includes certain information, such as amount of rent, beginning and end of the lease, and a reasonable description of the premises. If a lease exists according to this section of the law but does not include certain terms, other sections of the law apply to the lease. For example:

Access to Premises. If a tenant is not in default for rent, a tenant is entitled to exclusive possession of the premises except in certain circumstances related to showing the property to prospective tenants or making repairs.³⁶

³¹ Ibid. § 93.011.

³² Ibid. § 93.012.

³³ Va. Code Ann. § 55.1-1410.

³⁴ Ibid. § 55.1-1411.

³⁵ Ibid. § 55.1-1412.

³⁶ Wis. Stat. Ann. § 704.05(2).

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Landlord’s duties. If a lease document does not have contrary provisions, a landlord is obligated to:

- Keep portions of the premises where landlord maintains control in reasonable state of repair;
- Keep equipment under landlord’s control that landlord has agreed to supply in reasonable state of repair (e.g., heat, water, elevator, air conditioning);
- Make all necessary structural repairs;
- Except in limited circumstances, repair or replace equipment provided with the premises and no longer in reasonable working condition re: plumbing, electrical wiring, machinery, or other equipment; and
- Comply with any local housing codes.

The negligence or improper use of the premises by one tenant does not end the landlord’s duties as to other tenants.³⁷

In certain circumstances when a premises becomes “untenantable” due to damage from water, fire, etc., the tenant may leave the premises and not be liable for rent. Or, if the tenant is able to remain in part of the premises, the landlord must abate (lower) the rent from the time the premises becomes untenable.³⁸

Notice Requirement to Terminate Tenancy. Periodic tenancies and tenancies at will are subject to the statutory law regarding notice requirements for ending a tenancy, including length of time and required content in a notice to terminate a tenancy.³⁹

7. Los Angeles, California

In March 2020 at the beginning of the COVID-19 pandemic, the Los Angeles Board of Supervisors approved an executive order that temporarily halted commercial evictions for businesses with fewer than 100 employees. In 2022, the Board subsequently enacted permanent laws for Commercial Tenant Protections, finding that the combination of “unpaid commercial rent debt and a competitive commercial rental market creates an imbalance of power between landlords and tenants, which has resulted in many small commercial tenants being unwilling or unable to assert their legal rights under the County’s Eviction Moratorium.”⁴⁰

³⁷ Ibid. § 704.07(2).

³⁸ Ibid. § 704.07(4).

³⁹ Ibid. § 704.19.

⁴⁰ Los Angeles County, CA Code of Ord., Ch. 8.45.

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Among other things, the law prohibits landlords or anyone acting on behalf of a landlord from:

- Stopping or interrupting services required under rental agreements or under federal, state, or county health or safety laws;
- Acting in bad faith by failing to perform required maintenance and repairs or failing to take required safety precaution with respect to things like noise, dust, asbestos, mold, etc., refusing to take rent payments or failing to provide an address for tenants to send rent payments;
- Threatening tenant physically or with words that are “likely to provoke an immediate violent reaction;”
- Taking actions to end a tenancy based on facts the landlord “has no reasonable cause to believe to be true;” and
- Offering payments to a tenant to vacate property more than once every six months if the tenant has notified the landlord that the tenant is not interested in receiving additional offers.

The law allows tenants to bring a civil action against the landlord, with penalties ranging from \$2,000-\$5,000 per violation. The county can also bring a civil action on a tenant’s behalf or pursue a criminal case against the landlord that could result in monetary fines and/or jail time. The law also says it is contrary to public policy for tenants to waive their rights under the law.

8. New York City, NY

The New York City code has a provision prohibiting landlord harassment of commercial tenants.⁴¹ Harassment includes “any act or omission by or on behalf of a landlord that (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property...”

The statute identifies examples of harassment, including:

- Using force or making threats against a tenant or a tenant’s invitee;
- Causing interruption of discontinuation of essential services: 1) repeatedly; 2) for an extended period of time; or 3) that substantially interferes with a tenant’s business;
- Repeatedly initiating frivolous court proceedings;

⁴¹ N.Y. Admin. Code §§ 22-901 – 22-904.

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- Removing a tenant's personal property from the premises;
- Interfering with an entrance door to the property by removing it, rendering the lock inoperable, or changing the lock without giving the tenant a new key;
- Preventing the tenant or an invitee from entering the property;
- Conducting unnecessary construction work on or near the premises that substantially interferes with a tenant's business;
- Other repeated acts to interfere with the operation of a tenant's business;
- Threatening a tenant based on the tenant's "age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence or status as a victim of sex offenses or stalking...."
- Asking for documentation of citizenship status of a tenant or anyone seeking to use the tenant's business;
- Unreasonably refusing to cooperate when a tenant seeks to do permitted repairs or construction; and
- Attempting to enforce a personal liability provision unenforceable under City law.⁴²

A tenant subject to harassment may bring a court action against the landlord. If the court finds the landlord did engage in harassment, the court can impose a civil fine of \$10,000-\$50,000 for each relevant property. In addition, a court may: 1) issue a restraining order; 2) order the Department of Permits to not approve construction or issue permits for the property; 3) issue other relief including injunctive or equitable relief, damages, attorney's fees, and court costs.⁴³

9. Philadelphia, PA

In 2022, the Philadelphia City Council enacted legislation requiring in most cases a 7-day waiting period between a landlord presenting proposed lease terms to a potential tenant and signing of a lease – to allow a prospective tenant time to review city zoning information to ensure that the property can be used for the tenant's intended business purpose. The law requires landlords to provide prospective tenants with a city-issued guidebook that includes instructions on how to research and find relevant zoning information.⁴⁴

⁴² Ibid. §§ 22-902.

⁴³ Ibid. §§ 22-903.

⁴⁴ See Phil. Code §§ 9-5701, 9-5702.

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The law states that “no Lessor shall enter into an agreement to rent a Commercial Property with a Lessee who is not party to an existing lease agreement for such property, until the Lessee has been afforded an opportunity to determine the zoning and approved uses of the Commercial Property after receiving the commercial leasing disclosures required by this Section.”⁴⁵ Both parties must sign an acknowledgement form indicating the prospective tenant was provided the disclosures and was informed of the right to the 7-day period before signing a lease.⁴⁶

The guidebook published by the city states that its purpose “is to help support small business owners who are seeking to rent commercial spaces for their businesses. This guide should be used by potential commercial lessees to make educated decisions prior to entering into a lease.”⁴⁷ The guidebook includes instruction for prospective tenants on:

- How to find permits that have been issued for a property;
- How to identify legally permitted uses of a property; and
- How to determine whether a property has open violations pending.⁴⁸

The guidebook also includes resources for business owners, including information on legal services, language access services, and small business resources and is available in English, Spanish, and Simplified Chinese.⁴⁹

The law also permits a lessee (even a prospective lessee) to sue a landlord who violates the law for actual damages, punitive damages up to \$2,000 per violation, plus attorney and court costs.⁵⁰

D. Legacy Business Programs

A few local jurisdictions in the U.S. have established Legacy Business Programs to highlight and promote businesses that have been in a jurisdiction for an established period of time and contribute to the character of a neighborhood or community in the jurisdiction. Some programs are operated by the local government and some by nonprofit organizations – often a heritage or preservation organization.

While Legacy Business Programs typically provide businesses with promotional exposure in the community, programs may also include supports through grants, business education support,

⁴⁵ Ibid. § 9-5702(1).

⁴⁶ Ibid.

⁴⁷ [Commercial Leasing Notice](#), City of Philadelphia Dept. of Licenses and Inspections, at p. 3 (2022).

⁴⁸ Ibid.

⁴⁹ Ibid. at pp. 13-14; “[Commercial leasing notice guide](#),” City of Philadelphia.

⁵⁰ Ibid. § 9-5702(3).

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and/or legal support.⁵¹ OLO examined publicly available resources to identify Legacy Business Programs that provide businesses with some access to resources to help with commercial leases and found examples in three government-led programs: Boston, MA, Los Angeles, CA, and San Francisco, CA.⁵² This section summarizes relevant information for these programs.

1. Boston, Massachusetts

Boston announced its first group of legacy businesses in 2023. A Boston business is considered a legacy business if it:

- Has operated in the city in the same location for at least 10 years;
- Has contributed to cultural, historical, and societal assets of the community or a neighborhood; and
- Plans to maintain its business in the city.⁵³

Members of the public can nominate businesses. From that list, each Boston Councilor can choose five businesses for review by a committee. The committee recommends 25 businesses to the Mayor for final approval as legacy businesses.

Program information states that legacy businesses in Boston “will receive targeted technical assistance with a focus on succession planning and employee ownership. Businesses will also receive a commercial lease toolkit and free legal consultation (with City of Boston partners).”

2. Los Angeles, California

In 2022, the City of Los Angeles began a Legacy Business Program. A Legacy Business is defined as a business that has been in operation for 20+ years in the same community and meets three of the four following criteria:

- It contributes significantly to its community's history or identity.
- It sustains and cultivates distinctive cultural traditions or practices.
- The business is not franchised or affiliated with a national corporate chain.

⁵¹ “[Legacy Businesses](#),” DC Preservation League.

⁵² OLO looked at information available for Legacy Business Programs in Washington D.C., Baltimore, MD, Laurel, MD, Birmingham, AL, Evanston, IL, and San Antonio, TX and did not find any information about supports for businesses related to commercial leasing.

⁵³ “[Legacy Business Program](#),” City of Boston.

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- It provides vital goods and services in a language and manner that is culturally accessible to the community.⁵⁴

Program benefits for participating businesses include technical assistance, financial assistance, promotion activities, and government connections. The Legacy Business website states that technical assistance for businesses will begin in 2025, be online to save business owners' time, and include access to both legal consultation and assistance with lease negotiation.⁵⁵

3. San Francisco, California

The City of San Francisco maintains a registry of Neighborhood Anchor Businesses, which are businesses that have been in continuous operation for 15 years or more, have been in at least one physical location in specific commercial, historical, conservation, or cultural districts, and have 100 or fewer employees.⁵⁶ Businesses that are part of the city's Legacy Business Registry (businesses that have been in business for 30+ years) are automatically included in the Neighborhood Anchor Business Registry.

Among other things, Neighborhood Anchor Businesses are given priority if the city provides businesses with commercial lease assistance, conflict resolution, or commercial eviction defense programs.⁵⁷

E. Commercial Rent Control

Rent control refers to laws or policies that limit how much a landlord can charge for rent and how they can increase an existing tenant's rent. No state or local jurisdiction in the U.S. currently has a law regulating the setting or increase of commercial rent. Numerous states like Illinois and Arkansas specifically prohibit commercial rent control.⁵⁸ OLO found current legislation in New York that would establish commercial rent control in New York City. And in 1982, voters in Berkeley, California approved commercial rent control for a district in Berkeley, but the law became unenforceable in 1987 when the state enacted a law to prohibit commercial rent control by local governments.

⁵⁴ "[LA Legacy Business Program FAQ](#)," City of Los Angeles Economic & Workforce Development Department.

⁵⁵ Ibid.

⁵⁶ San Francisco Admin. Code § 2A.244.

⁵⁷ Ibid. § 2A.245.

⁵⁸ See 50 Ill. Comp. Stat. Ann. 825/5; Ark. Code Ann. § 14-16-601.

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New York City, New York. Current bills in the New York Senate and New York State Assembly would enact commercial rent regulation in New York City.⁵⁹ If enacted, a rent guidelines board would have authority to establish rent guidelines for vacant commercial properties and for commercial lease renewals. The law would also establish a minimum rental term of 10 years unless the landlord and tenant agree on a different rental period.

Versions of the bills were first introduced in the legislature's 2019-2020 session. The current bills, introduced in early 2023, were referred to committee following introduction but neither was acted on in committee. On January 4, 2024, each bill was re-referred to committee. As of the release of this report, neither bill has been acted on in 2024.

A similar bill to enact commercial rent stabilization was introduced by the New York City Council in March 2022 and referred to committee.⁶⁰ This bill would similarly establish a rent guidelines board that would establish rules for commercial rent adjustments. The city legislation would only apply to commercial spaces as follows: retail stores of 10K sq. ft. or less; manufacturing spaces of 25K sq. ft. or less; and professional services or office spaces of 10K sq. ft. or less. As of the release of this report, no action has been taken on the bill.

Berkeley, California. In response to commercial gentrification, in 1982 Berkeley residents voted to approve a commercial rent stabilization law for the Elmwood District of Berkeley.⁶¹ However, in 1987, the California legislature enacted a law that bans local jurisdictions in the state from enacting any commercial rent or eviction controls, precluding enforcement of Berkeley's law.⁶² The California legislature determined that rent for commercial property was a statewide concern and that local controls could have impacts beyond local jurisdictions:

The Legislature finds that the price charged for commercial real property is a matter of statewide concern. Price controls on commercial rents discourage expansion of commercial development and entrepreneurial enterprise. These controls also discourage competition in the open market by giving artificial price benefits to one enterprise to the disadvantage of another. Because the impact of these controls goes beyond the local boundaries within which the controls are imposed, the adverse economic consequences become statewide.

⁵⁹ See New York Senate [Bill 5466](#) (Mar. 6, 2023) and New York State Assembly [Bill 2459](#) (Jan. 26, 2023).

⁶⁰ [Commercial Rent Stabilization Bill Summary](#), The New York City Council.

⁶¹ W. Dennis Keating, "[The Elmwood Experiment: the Use of Commercial Rent Stabilization to Preserve a Diverse Neighborhood Shopping District](#)," 28 *Journal of Urban and Contemp. Law* 107 (1985).

⁶² California Civil Code § 1954.25.

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In order to prevent this statewide economic drain from occurring, the Legislature hereby enacts a uniform system with respect to commercial rents, which shall apply to every local jurisdiction in the state. This legislative action is needed to prevent the imposition of artificial barriers on commercial rents, as well as to define those areas not included within the definition of commercial real property.⁶³

F. Conclusion

This report examines legal protections in Maryland and Montgomery County law for tenants with commercial leases and summarizes these types of protections found in other jurisdictions' laws. While legal protections for residential tenants are very common across the country, most states have not adopted similarly extensive protections for commercial tenants based on the theory that both parties to a commercial lease – the landlord and tenant – are businesspeople who have knowledge to protect their own interests in lease negotiations. Many lease provisions for residential tenants that are governed by state or local law are left to negotiation for commercial tenants.

OLO found some state and local legal codes do include some protections for commercial tenants, including the Maryland Code. Some jurisdictions are also providing assistance with the leasing process to commercial tenants through Legacy Business Programs.

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⁶³ Ibid.