

Confession of Judgment Clauses in Commercial Leases

PUBLISHED ON
July 12, 2012

One of the most negotiated provisions in a commercial lease agreement is a confession of judgment clause. Two types of confessions of judgment exist in Pennsylvania: one for money damages and one for possession of the leased premises. A confession of judgment clause allows a landlord to file specific paperwork with the court to enter judgment against its tenant without the opportunity for a hearing or response from the tenant. The landlord is not required to notify the tenant, and the tenant does not have a right to dispute the entry of the judgment, except in limited circumstances. Usually, the landlord is permitted to confess judgment against the tenant only after the occurrence of a defined event, like failure to pay rent. As you can imagine, with such a powerful remedy at the fingertips of a landlord, Pennsylvania courts have limited its application, particularly with respect to lease amendments and assignments.

Generally, under Pennsylvania law, a confession of judgment clause contained in a commercial lease agreement will only be enforceable if it is restated in its entirety in a lease amendment or assignment. A confession of judgment clause that is not restated in a lease amendment or assignment may not be enforceable.

For instance, assume a landlord and tenant enter into a commercial lease agreement containing a confession of judgment clause. Two years later, the landlord and the tenant amend the lease to extend the term but fail to restate the confession of judgment clause in the amendment. Under Pennsylvania law, the tenant now has an argument that the confession of judgment clause in the original lease is ineffective against the tenant. Consequently, the landlord may be forced to pursue other remedies in the event of a default by the tenant, which other remedies often require additional time and expense.

The same principle applies in an assignment of a commercial lease agreement. In fact, Pennsylvania courts have expressly held that a confession of judgment clause is not binding on the assignee of a commercial lease without the assignee's express written acknowledgement of the confession of judgment clause.

Accordingly, to retain the right to confess judgment against a tenant or a proposed assignee, a landlord should always ensure that the confession of judgment clause is restated, in its entirety, in any lease amendment or assignment.

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