

Tenant in Default: Landlord's Rights and Remedies (Commercial) (PA)

by Practical Law Real Estate

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A Practice Note discussing a landlord's rights and remedies following a tenant default in connection with a Pennsylvania commercial lease. This Note provides an overview of common breaches by commercial lease tenants such as the failure to pay rent, abandonment of the premises, and bankruptcy, as well as the remedies available to commercial landlords in Pennsylvania, such as eviction, ejectment, and confession of judgment.

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If a tenant defaults under a commercial lease agreement, a landlord has various rights and remedies available:

- At law.
- In equity.
- By contract, under the terms of the lease.

When negotiating a commercial lease, the landlord should clearly specify all the situations constituting a tenant default that trigger the landlord's rights and remedies under the lease. However, a landlord should not rely on the terms of the lease agreement to replace a comprehensive review of a proposed tenant and its creditworthiness.

In the context of commercial leasing, this Practice Note provides a summary of:

- Situations when a tenant is in default.
- Remedies available to a landlord.
- Pennsylvania state law relating landlord rights and remedies.
- Landlord considerations when negotiating a lease.

Common Tenant Defaults

A tenant defaults when the tenant fails to or cannot perform one or more of the tenant's obligations under a lease. A commercial lease generally defines **events of default** that trigger certain landlord remedies. Some defaults may immediately constitute an event of default, while others may develop into an event of default if not cured by the end of any notice and cure or grace period provided in the lease. (See, for example, [Standard Document, Office Lease Agreement \(Multi-Tenant Net Lease\) \(Pro-Landlord Short Form\) \(PA\): Section 17](#) and [Drafting Note: Events of Default](#).) Counsel should draft a commercial lease to both broadly and specifically define events of default. Any provisions may be included if they are not barred by statute or other law (*Bayne v. Smith*, 965 A.2d 265, 266 (Pa. Super. 2009)).

Common tenant defaults include the following:

- Failure to pay rent (see [Failure to Pay Base Rent or Additional Rent](#)).
- Abandonment or vacating the leased premises before the lease expires (see [Tenant Abandons or Vacates Leased Premises](#)).
- Failure to discharge a lien (see [Tenant Fails to Discharge Construction Lien \(Mechanic's Lien\)](#)).
- Assignment of tenant's assets or rights to creditors (see [Asset Sale or Bankruptcy](#)).
- Bankruptcy (see [Asset Sale or Bankruptcy](#)).
- Receivership (see [Receiver Appointed for Tenant or Tenant's Assets](#)).
- Garnishment, levy, or other taking of the tenant's assets by legal process.

Failure to Pay Base Rent or Additional Rent

The tenant's failure to pay **base rent** or **additional rent** when due is the most common tenant default. Landlords often grant the tenant a grace period for payment of rent. Best practice is to review the lease to determine any grace periods or notice requirements (see [Practice Note, Office Lease Negotiations for Tenants: Tenant's Defaults and Standard Document, Office Lease Agreement \(Multi-Tenant Building Gross Lease\) \(Pro-Landlord Short Form\) \(PA\)](#); [Drafting Note: Rent](#)).

Tenant Abandons or Vacates Leased Premises

A tenant may breach a lease by abandoning or otherwise vacating the leased premises before the end of the lease term. A landlord may deem a tenant to have abandoned the leased premises if:

- The tenant fails to open for business for a consecutive, specified period, as described in the lease.
- The tenant notifies the landlord that the tenant has abandoned and vacated the leased premises.
- The tenant vacates the premises and leaves a sign notifying customers that the tenant has closed or moved, but fails to specifically notify the landlord.

Failure to open for business can be a problem for landlords because:

- The tenant may be in distress and unable to meet its financial obligations under the lease.
- Empty space in a building may negatively affect the landlord's marketing of the building to prospective tenants.
- Shuttered spaces in a retail setting could trigger other tenants' **co-tenancy** rights and reduce the landlord's rental income stream.

Tenant Fails to Discharge Construction Lien (Mechanic's Lien)

The existence of a **mechanic's lien** on the landlord's property:

- **Clouds title.**
- Could adversely affect the landlord's ability to sell or refinance.

Counsel should review the lease to determine the rights of the landlord to demand that the tenant discharge the lien.

For a general discussion of mechanic's liens, see [Practice Note, Mechanics' Liens in Practice \(PA\)](#).

Asset Sale or Bankruptcy

A tenant in financial distress can:

- Sell its assets to raise funds to pay its creditors. The sale can be accomplished either by:
 - the tenant; or
 - a third party who takes an assignment of the tenant's business or assets.
- File for bankruptcy.

In addition, a tenant's unpaid creditors may force the tenant into an involuntary bankruptcy.

Tenant Sells Assets

Under some commercial leases, the sale or removal of a substantial portion of the tenant's property in the premises in a manner that is outside of the normal course of business is an event of default. If a tenant sells assets from the premises, counsel should review the lease to determine if the sale rises to the level of a default.

Tenant Assigns Assets to Creditors

Many commercial leases define an assignment for the benefit of creditors as an event of default. Counsel should review the lease to determine if:

- If the landlord's consent to the assignment is required.
- The exact conditions under which an event of default occurs.

Voluntary or Involuntary Bankruptcy

Many commercial leases permit the landlord to declare a tenant default if the tenant:

- Voluntarily files bankruptcy.
- Is forced into bankruptcy by the tenant's creditors.

Commonly, the tenant may cure the default by dismissing the bankruptcy. Counsel should review the lease to determine if there are any cure periods that are conditions precedent to the landlord declaring an event of default.

If the tenant does not dismiss the bankruptcy, the landlord generally does not have access to the remedies set out in the lease until they are approved by the bankruptcy court.

For discussions on bankruptcy filing by a commercial tenant, see [Practice Notes, Commercial Tenant Bankruptcies: Issues and Strategies for Landlords](#) and [Executory Contracts and Leases in Bankruptcy: Strategies for Non-Debtors](#).

Receiver Appointed for Tenant or Tenant's Assets

When a tenant defaults on its debt obligations, a secured creditor in Pennsylvania may request that a court appoint a neutral party to preserve or liquidate collateral pending the court's resolution of the secured creditor's claims (15 Pa. C.S.A. § 1984 and 39 P.S. § 1).

When a court appoints a receiver, the receiver in essence becomes the tenant and is responsible to pay the tenant's rent to the landlord. However, the landlord most likely does not have first priority. First priority goes to the receiver to pay for the receiver's costs and expenses (39 P.S. § 96 and *Globe Solvents v. Nouskhajian*, 25 A.2d 595, 597 (Pa. Super. 1942)).

If a court appoints a receiver for a tenant, the landlord may want the ability to immediately terminate the lease and make a claim for any rent due and for costs incurred in the landlord's efforts to find a new tenant.

Tenant's Assets Attached or Taken by Legal Process

Many leases permit the landlord to declare an event of default when a creditor makes an **attachment** of the tenant's assets or seizes the tenant's assets. Once the assets are seized, it is likely that the assets will be sold to pay off the judgment of a creditor (other than the landlord).

After the creditor executes on or seizes the tenant's assets, the landlord is afforded protection over general creditors (*In re Uni-Lab, Inc.*, 282 F.2d 123, 126 (3d Cir. 1960) (applying Pennsylvania law)). Additionally, if the landlord provides notice to the levying officer or sheriff, the landlord is entitled to rent that is due or in arrears at the time that the assets are seized, but only up to one year's rent (68 P.S. § 321).

Other Non-Monetary Events of Default

The default section of the lease may contain a general clause allowing the landlord to declare an event of default if the tenant fails to observe or perform any of its other non-monetary obligations set out in the lease. The lease typically requires the landlord to give the tenant written notice of the default and the opportunity to cure before the landlord can exercise its remedies. Examples of non-monetary defaults include:

- Using the leased premises for something other than the permitted use stated in the lease.
- Failing to maintain or repair the leased premises.
- Failing to provide the landlord with a **letter of credit** or **security deposit**.
- Assigning or subletting the leased space without the landlord's consent.
- Failing to procure or maintain insurance.
- Failing to name the landlord as an additional insured on **tenant's insurance policy** covering the leased premises.

- Failing to promptly surrender the leased premises at the expiration of the lease term.
- Failing to timely execute a **tenant estoppel certificate** (see [Standard Document, Tenant Estoppel Certificate](#)).
- Failing to comply with the rules of the building.
- Failing to deliver tenant financial information to the landlord.
- Recording the lease without the landlord's prior written consent.

Landlord Remedies

The landlord's remedies are generally extensively outlined in the lease (see [Practice Note, Office Lease Negotiations for Tenants: Tenant's Defaults](#) and [Standard Document, Office Lease Agreement \(Multi-Tenant Building Gross Lease\) \(Pro-Landlord Short Form\) \(PA\): Section 15](#) and [Drafting Note: Landlord's Remedies](#)).

The landlord may exercise its rights against the tenant at any time after the tenant defaults, subject to any notice and grace or cure periods contained in the lease.

Counsel should confirm that the landlord's remedies in the lease are cumulative. If remedies are cumulative, the landlord's exercise of one remedy under the lease does not preclude it from exercising any other remedies available to it ([Scull v. Reiley](#), 19 A.2d 76, 78 (Pa. 1941)).

If the tenant's default is a monetary one, the landlord may engage collection agencies or collection attorneys before involving the courts.

Pennsylvania courts generally enforce a default interest rate stated in a contract ([Pittsburgh Const. Co. v. Griffith](#), 834 A.2d 572, 593 (Pa. Super. 2003)). If no interest is specified, interest accrues at the statutory rate, 6% per year (41 P.S. § 202).

Acceleration of Rent

Many commercial leases contain an acceleration of rent clause. If the tenant defaults, the landlord generally has the right to accelerate all:

- Base rent due under the lease over the remainder of the lease term.
- Additional rent to the extent that the additional rent can be calculated to a fixed sum.

So that the landlord does not receive a windfall, the accelerated amount should be discounted to its present value. The acceleration clause in the lease may specify the discount rate. If it does not, a common discount rate is 6% per year.

Most commercial leases provide that failure to pay the accelerated rent is cause for termination of the lease and eviction. For more information on eviction procedures, see [Practice Note, Summary Eviction Procedures in Magisterial District Court Outside of Philadelphia \(PA\)](#).

Confession of Judgment

A confession of judgment clause in a commercial lease provides that the landlord may go to court to enter judgment against tenant without notice or hearing. This can shorten the timeline and cost for taking possession.

Unlike many other states, Pennsylvania allows confession of judgment clauses in commercial leases (68 P.S. § 250.511). Recovery of both a judgment for possession and a money judgment for rent in arrears is permitted (231 Pa. Code §§ 2953 and 2972), provided the lease allows it. Interest on past-due funds and attorney's fees are also permitted.

If the landlord is confessing only a money judgment, the landlord may enter judgment for just the rent that is in arrears or for all rent due through the expiration of the lease term (accelerated rent).

A landlord may not seek judgment for both future rent and possession (*Pops PCE TT, LP v. R & R Rest. Grp., LLC.*, 208 A.3d 79, 88-89 (Pa. Super. 2019), reargument denied (June 12, 2019). This prevents a double recovery by the landlord (see [Practice Note, Ejectment and Confession of Judgment Procedures in Common Pleas Court \(PA\): Election of Remedy: Possession or Future Rent](#)).

Pennsylvania courts strictly construe confession of judgment clauses against landlords (*Dominic's Inc. v. Tony's Famous Tomato Pie Bar & Rest., Inc.*, 214 A.3d 259, 273 (Pa. Super. 2019)). The confession of judgment must be in writing and signed by the tenant. The clause should also:

- Be printed in all capital letters.
- Be set out in paragraphs separate from other text.
- Be written in a clear and conspicuous manner.

(*Hazer v. Zabala*, 26 A.3d 1166, 1171-72 (Pa. Super. 2011).)

To confess judgment, the landlord must file a short complaint with the prothonotary in the court of common pleas in the county where the premises is located (Pa. R.Civ.P. No. 2971 and see [Practice Note, Ejectment and Confession of Judgment Procedures in Common Pleas Court \(PA\): Complaint for Entry of Judgment by Confession](#)).

Once the complaint is served on the tenant according to local procedure, the tenant has 30 days to file for relief from the judgment (Pa. R.Civ.P. No. 2956.1(c)(2) and 2959). The landlord then files with the prothonotary either or both, as applicable:

- A praecipe for a writ of execution for a money judgment, using substantially the form in Pa. R.Civ.P. No. 2963.
- A praecipe for a writ of possession, using substantially the form set out in Pa. R.Civ.P. No. 2974.1. For a form that complies with the official form for a writ of possession, see [Standard Document, Praecipe for Writ of Possession \(Confession of Judgment in Ejectment\) \(Evictions\) \(PA\)](#).

The writ is then transferred to the sheriff to levy on the tenant's property, eject the tenant, or both (Pa. R.Civ.P. No. 3103(e) and 3161.1).

For more information on confession of judgment for possession, see [Practice Note, Ejectment and Confession of Judgment Procedures in Common Pleas Court \(PA\)](#).

Action for Possession of Premises

Confession of judgment for possession is available to a landlord only where there is a commercial lease that contains a proper confession of judgment provision (see [Confession of Judgment](#)).

If the lease does not contain a proper confession of judgment provision, Pennsylvania law recognizes two distinct actions by which a landlord may recover possession of leased premises:

- **Eviction.** Refers to a landlord's action for possession under the Landlord Tenant Act, which provides an expedited summary process for eviction on specified grounds (68 P.S. §§ 250.501 to 250.514 and see [Summary Eviction Procedures in Philadelphia Municipal Court \(PA\): Eviction Generally](#)). Eviction actions must be brought in the magisterial district court or Philadelphia Municipal Court, depending on the location of the premises.
- **Ejectment.** Refers to an action for possession after the lease term has ended, whether by expiration of term or forfeiture of lease on default. Ejectment actions must be brought in the court of commons pleas. (See [Practice Note, Ejectment and Confession of Judgment Procedures in Common Pleas Court \(PA\): Action for Ejectment](#)).

In practice, ejectment actions in landlord-tenant matters are less common than eviction actions, especially for residential tenancies. Landlords generally prefer to recover possession using the summary eviction process, which tends to be faster and less expensive than an ejectment action in the court of common pleas. There are, however, some circumstances in which a landlord may prefer to bring an action in ejectment (see [Practice Note, Ejectment and Confession of Judgment Procedures in Common Pleas Court \(PA\): Advantages of Ejectment](#)).

No Self-Help to Recover Possession

A landlord should not use any self-help measures (measures without judicial process) to evict a commercial tenant or otherwise recover possession of leased premises in Pennsylvania. Examples of landlord self-help measures include:

- Changing the locks to keep the tenant from entering.
- Shutting off the water or electricity to the leased premises.
- Removing the tenant's personal property.
- Using force, violence, or intimidation to remove the tenant.
- Allowing or causing the physical condition of the premises to become uninhabitable or unusable, such as by removing doors or windows.

(*Lenair v. Campbell*, 31 Pa. D. & C.3d 237, 240-42 (Pa. Com. Pl. 1984) and see [Practice Notes, Summary Eviction Procedures in Magisterial District Court Outside of Philadelphia \(PA\)](#) and [Summary Eviction Procedures in Philadelphia Municipal Court \(PA\)](#).)

Action for Possession and Rent

Damages for rent alone are not brought before a magisterial district judge ([Pa.R.C.P.M.D.J. No. 501\(A\)](#)). However, Rule 503(C)(8) provides that the landlord, in making a claim for possession before a magisterial district judge, the may also make a claim for:

- Rent due and unpaid as of the date of the filing of the complaint.
- The amount of rent that will remain due and unpaid at the date of the hearing.
- The amount of damages, if any, claimed for injury to or unjust detention of the real property.

([Pa.R.C.P.M.D.J. No. 503\(C\)\(8\)](#).)

In an action before a magisterial district judge for possession and rent, if the landlord is awarded money damages, the landlord must request an order of execution:

- No earlier than 30 days from the date of the judgment.
- No later than five years from that date.

([Pa. R.C.P.M.D.J. No. 402\(A\)\(1\)](#).)

The magisterial judge in the district where the judgment was entered has authority to order execution of the judgment for property located within that jurisdiction and outside that jurisdiction ([Pa. R.C.P.M.D.J. No. 402\(A\)\(2\)](#)).

A judgment from a magisterial district court does not create a lien on real property until it is filed in common pleas court ([42 Pa. C.S.A. § 1106](#)). If the landlord wants a lien on real property owned by the tenant, it should enter the judgment from the magisterial district court in the common pleas court within five years after the judgment. Within 14 days after filing the judgment in common pleas court, the landlord should file proof of the entry of judgment with the magisterial district court so that the magisterial district court can vacate the judgment from its docket. ([Pa.R.C.P.M.D.J. No. 402\(D\)\(6\)](#).)

If the landlord stays within the jurisdiction of the magisterial district court, the magisterial district judge will deliver the order of execution to a certified constable once the landlord files a request to order execution. Service by the constable must be made on the tenant within 60 days. ([Pa.R.C.P.M.D.J. No. 403](#), and [Pa.R.C.P.M.D.J. No. 405](#).)

The levy shall only be made on tangible, nonperishable personal property of the tenant. This means that money in a bank account cannot be levied. Other exceptions to levy are clothes, schoolbooks, and bibles. Sometimes, there is also a \$300 general monetary exemption. ([42 Pa. C.S.A. § 8123](#); [Pa.R.C.P.M.D.J. No. 406](#) and [Pa.R.C.P.M.D.J. No. 409](#).)

The constable executing the order, after having made a levy on any personal property, may enter the premises where the goods are located either peaceably or by force to take physical possession of the property levied on ([Pa.R.C.P.M.D.J. No. 411](#)).

The personal property is then sold. Notice of the sale is given six days before the sale. Both the landlord and tenant get notice of the date of the sale. Notice of the sale is also posted in the magisterial district court and at the place of sale or levy. This alerts

other creditors of the tenant of the sale. ([Pa.R.C.P.M.D.J. No. 412.](#)) If the landlord purchases any personal property at the sale, the value of the item is subtracted from the judgment awarded to the landlord ([Pa.R.C.P.M.D.J. No. 414.](#))

Within five days after the sale, the constable prepares a schedule of distribution. Within ten days after filing the schedule of distribution, the officer executing the order distributes the proceeds. ([Pa.R.C.P.M.D.J. No. 416.](#))

Action for Rent

Damages for rent alone must be brought in the court of common pleas. The monetary damages that a landlord may recover from a tenant following the tenant's breach of the lease are contractual (see [Newman Dev. Grp. of Pottstown, LLC v. Genuardi's Family Mkt., Inc.](#), 98 A.3d 645, 658 ([Pa. Super. 2014](#))). For example, if the lease does not state that the landlord may collect attorneys' fees and consequential damages following a tenant's breach, the court will not award either to the landlord. Best practice is to review the lease to see what damages the landlord is entitled to collect.

The judgment awarded to the landlord may be enforced against the tenant's property by filing a writ of execution within 20 years following the entry of the judgment ([42 Pa. C.S.A. § 5529](#)). The landlord must request a writ of execution in substantially the form set out in [Pa. R.Civ.P. No. 3251](#) ([Pa. R.Civ.P. No. 3103](#)).

The sheriff has 90 days to serve and attach the tenant's property ([Pa. R.Civ.P. No. 3106\(d\)](#)). Real and personal property of the defendant may be levied on or attached in any order or simultaneously, as the plaintiff may direct ([Pa. R.Civ.P. No. 3107](#)).

Landlord's Right to Cure Tenant Default

Some leases contain a provision allowing the landlord to cure a tenant's default and charge the tenant for the cost to cure. For example, if a tenant fails to discharge a mechanic's lien against the premises, the lease may allow the landlord to discharge it and seek reimbursement from the tenant. Counsel should review the lease to determine what rights the landlord has.

Mitigation of Damages

Landlords in Pennsylvania do not have a duty to mitigate damages by reletting ([Ralph v. Deiley](#), 141 A. 640, 643 ([Pa. 1928](#))). However, if the landlord does relet, it is not entitled to recover rent from both the original tenant and new tenant for the same period, but may collect from the original tenant all costs, directly or indirectly incurred by the landlord in finding a new tenant. This includes consequential damages and attorneys' fees, if specified in the lease agreement.

Attorneys' Fees

Certain statutory rights may also be expanded by the lease agreement. For example, the Landlord and Tenant Act of 1951 ([68 P.S. §§ 250.101 to 250.602](#)) does not provide for attorneys' fees as damages. However, Pennsylvania courts will award attorneys' fees if the lease calls for them ([Bayne](#), 965 A.2d at 266).