



Good guy guarantees, what they are & why your Landlord wants one

William Gary, MBA, MIM
ITRA MacLaurin Williams
2696 South Colorado Boulevard
Suite 587
Denver, CO 80202
Phone 303-294-0277
Fax 303-643-5752
Email: wgary@MacLW.com
Web Site: www.MacLW.com



*International Tenant
Representative Alliance*

MACLAURIN WILLIAMS

Services & Solutions for Users of Commercial Real Estate

Good guy guarantees, What they are & why your Landlord wants one

By Bert Rosenblatt & Andrew Stein, ITRA Vicus Partners, New York City Office

A “Good Guy Guarantee” is a limited personal guarantee that, once signed, legally enables a commercial Landlord to pierce your corporate veil and legally go after you, personally, in the event that your company stops paying rent and refuses to vacate your commercial space.

Say you are a Tenant and your business falters or even fails. You vacate your office space and give it back to the landlord. This makes you a “good guy.” You have behaved responsibly; the Landlord can re-let the space and, if there are assets left in the corporation, the Landlord is free to go after them. However, so long as you are a “good guy” and vacate your space, the Landlord has no further recourse against you personally and cannot pierce the protection of your corporate veil.



However, if after a business failure, you stop paying rent and refuse to leave your space, thereby forcing your Landlord to evict you (something that often takes months and months), then you become a “bad guy.” Under the terms of a Good Guy Guarantee, the Landlord can now go after you personally.

From a Landlord’s perspective, a Good Guy Guarantee is an insurance policy against the amount of time that it can take to evict a Tenant, regain control of the space and get it leased again. If a failing Tenant is squatting in a space and not paying rent, then Landlord is damaged because he or she can’t rent the space and recoup its losses.

Hence, it’s common for Landlords to ask Tenants to sign Good Guy Guarantees. It is a method of financial and legal protection for the Landlord. It also makes remaining in a commercial space with the rent unpaid extremely undesirable for a Tenant on a personal basis and tends at least to cause the Tenant to vacate the space and allow the Landlord to re-market it to other prospective tenants.



Note that a Good Guy Guarantee is not, however, a blanket personal guarantee. Instead, it should be looked at as a promise (with some teeth to it) that the Tenant will return the space to the Landlord if the Tenant can no longer pay its rent.

A Good Guy Guarantee isn’t necessarily onerous to a Tenant. If worded properly, it can be a reasonable legal document. Nevertheless, a Tenant (and its real estate attorney) should make certain to carefully examine the wording of a Good Guy Guarantee with wise eyes. Often, a Landlord will add language to a Good Guy Guarantee that

creates additional and unwanted liabilities for a Tenant. For example, a common tactic is for Landlords to try and capture an additional three (3) to six (6) months of rent from the person signing the Good Guy Guarantee. Landlords do this by wording the Good Guy Guarantee in a way that requires the Tenant to give three (3) to six (6) months' prior notice if the Tenant plans to vacate its space. In the real world, a financially distressed Tenant is rarely able to provide this much notice to a Landlord. Consequently, an insertion like this works as a tool the Landlord can wield to extract an extra pound of flesh from the Tenant or the Good Guy personally.

There are two (2) other situations in which a Tenant should be particularly cautious: (1) if you sublease your space to someone else and (2) if your company is sold. In the case of a sublease, should your Subtenant decide to be a "bad guy" and not vacate your leased space when the sublease/lease ends, then the Landlord is going to look to you, personally, if you signed a Good Guy Guarantee, until the Subtenant actually vacates your space. The same is true if your company is sold. Even if another entity or individual acquires your company during the course of your lease, but your name remains on the Good Guy Guarantee attached to the lease, then you are the person that the Landlord is going to look for if things go awry.

Depending on the creditworthiness of a Tenant, the condition of the market and the needs of a Landlord, Good Guy Guarantee clauses can be negotiated out of a lease, or maybe mitigated or softened, so make sure that you don't just sign your name to a Good Guy Guarantee without first making sure you are fully aware of how this could impact you personally in the future. Landlords often have a way of slipping Good Guy Guarantees innocuously under a Tenant's nose at the very last second while signing a lease and saying, "I know that you're a good person, so you certainly won't mind signing this."



The Tenants that we represent are always good men and women, but our job as their Tenant Representative is to help them to be "Good, Smart Men and Women" and not allow them to expose themselves needlessly to a personal pothole surprise in the future.

William A. Gary, MBA, MIM, is a Principal of ITRA MacLaurin Williams in Denver/Boulder. The firm acts solely as a commercial Tenant and Buyer's advocate for a wide variety of corporate, non-profit and government clients by providing estate brokerage and consulting services. (We don't represent Landlords.) From its office in Denver, Colorado, ITRA MacLaurin Williams delivers Tenant and Buyer Representation services throughout North America, Latin America, the Pacific Rim and Europe as a global office of the International Tenant Representative Alliance ("ITRA"). For more information, please visit www.MacLW.com or contact Will Gary at 303-294-0277 or wgary@MacLW.com.

