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# Rent Acceleration Clauses Are Enforceable

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When drafted properly, rent acceleration clauses are enforceable if a tenant/debtor defaults on a monthly payment and fails to cure its default within a defined period. The law allows businesses to contractually agree to a rent acceleration clause as a liquidated (certain) damages provision. A liquidated damages clause establishes an amount agreed upon at the time the parties enter into their contract to fix the amount of damages in the event of a breach. It can be either a fixed sum or an agreed upon methodology to arrive at a fixed sum.

It is not enough to have a generic liquidated damages clause. The Massachusetts Supreme Judicial Court has held that whether a liquidated damages clause is enforceable or not is a question of law for the Court to determine. NPS v. Minihane, 451 Mass. 417, 149 (2008). The tenant/debtor bears the burden of proving the amount of the liquidated damages was so disproportionate to the actual damages that the liquidated damages clause is really an unenforceable penalty. TAL Financial Corporation v. CSC Consulting, Inc., 446 Mass 422 (2006).

In Cummings Properties, LLC v. National Communications Corporation, 449 Mass. 290 (2007), the Supreme Judicial Court held that in a commercial lease between sophisticated parties, an accelerated rent provision that served as liquidated damages is enforceable provided that the damages were not disproportionate to the reasonable estimated damages that could have been anticipated when the parties signed the lease. The essence of the analysis is the reasonableness of the damages provision at the time the contract is signed and not whether it is reasonable in hindsight.

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“Liquidated damages clauses” which allow the landlord or Note holder to elect, in the event of a default, actual or liquidated damages has been held unenforceable because it affords the landlord the option of choosing the highest return. Zuckerman v. Vano, 2013 WL 1799859 (2013). Drafting and enforcing liquidated damages clauses requires an experienced and skilled attorney such as Alan M. Cohen.

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For assistance in drafting and enforcing liquidated damages clauses and collecting on the commercial debt, call Attorney Alan M. Cohen at 508-620-6900 or email [alanmcohen@collections-law.com](mailto:alanmcohen@collections-law.com)



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