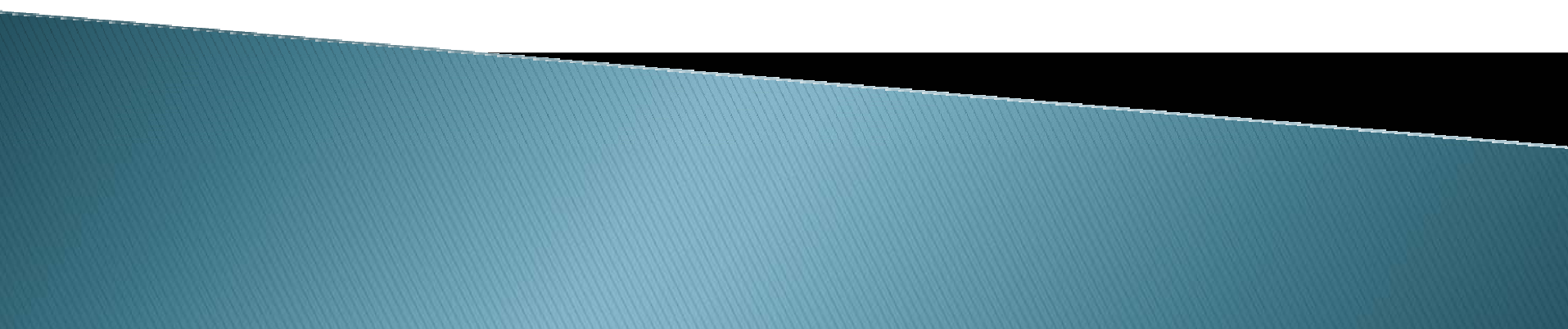


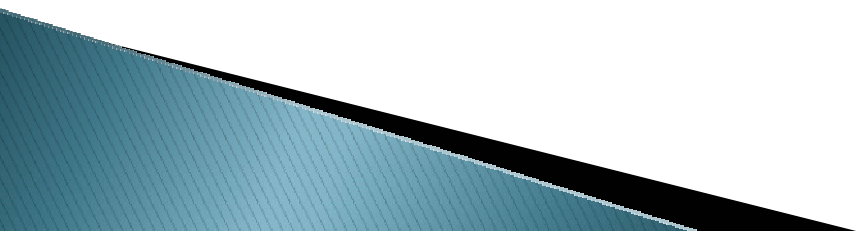
AAPA Port Administration and Legal Issues Seminar

Real Estate Leases

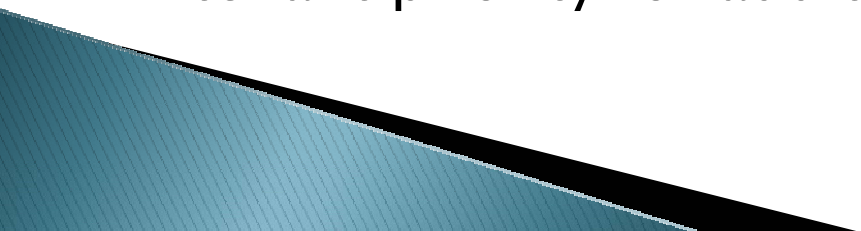
Heather McCloskey
Deputy City Attorney
Port of Los Angeles



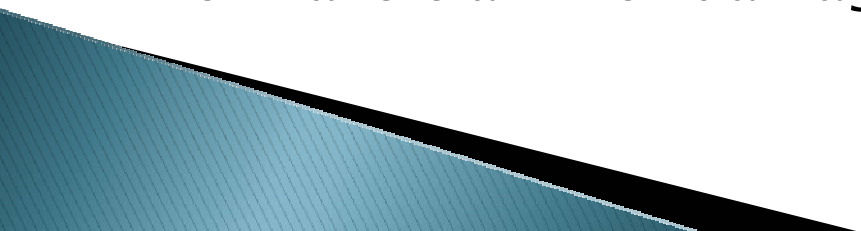
Lease Terms – Basic Provisions

- Description of the premises in the lease
 - Permitted Uses
 - Maintenance and Repair
 - Restoration
 - Indemnification and Insurance
 - Port Tariff applicable to Lease
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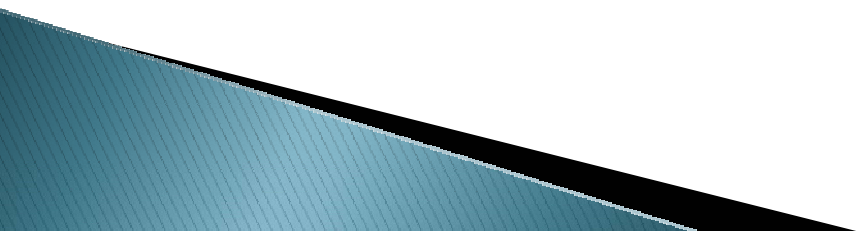
Lease Term – Description of Premises

- A lease should contain a clear description of the premises to be leased, including an engineering drawing attached as an exhibit.
 - If property is added or removed from the premises, update the lease description and drawing.
 - The lease can include terms to allow for an option to expand the property, such as for contiguous parcels that may become available in the future, giving the tenant priority for additional space.
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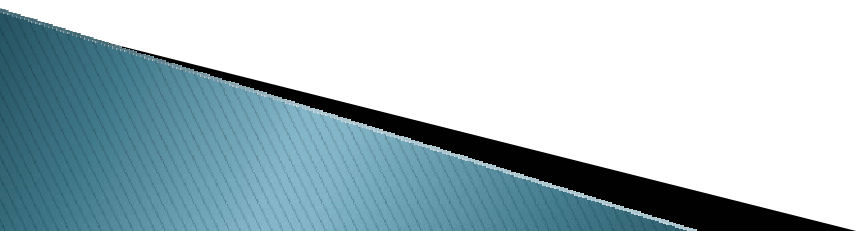
Use of Property Outside Leased Premises

- If issues arise as to what property was conveyed in a lease, the parties' actions may determine what property the parties intended to include.
 - When a particular area is used by a tenant but not included in the lease, the landlord should either try to remove tenant or add the property into the lease.
 - Use of property by tenant outside of premises is trespassing. Landlord may either add property to lease or have claim for damages that result from the trespass.
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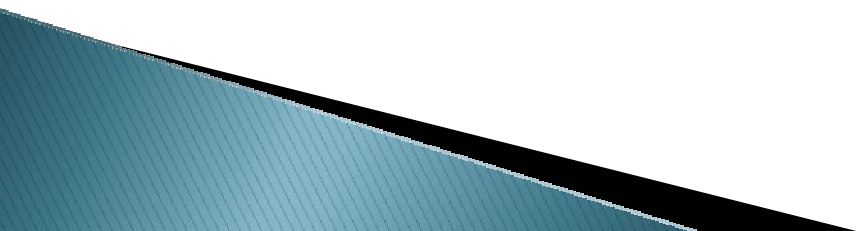
Lease Term – Permitted Uses

- If a lease does not limit the uses to which the premises can be put, a tenant may use the premises for any lawful, reasonable use of the property.
 - A lease may limit the uses for the property, and if the tenant uses it for any other purpose, it can be liable to the landlord for damages resulting from such use.
 - Restrict uses to those that will not be detrimental to the leased property or adjacent property.
 - Also seek to restrict uses that might result in landlord liability, such as contractual, tortious or criminal liabilities.
 - Tenant should inspect premises on or before occupancy and agree to suitability of premises for intended use.
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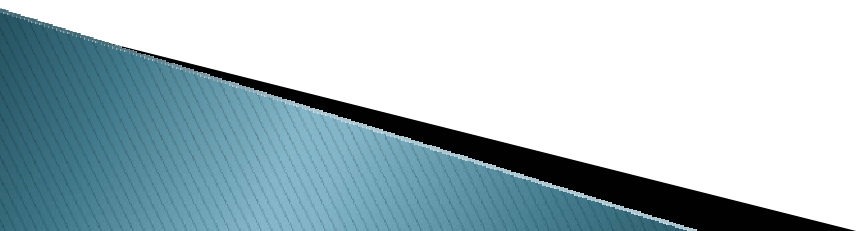
Lease Term – Maintenance and Repair

- Other than obligations specified in the lease, and in the absence of fraud or concealment, a landlord owes no general duty to a tenant to make repairs or to prepare the premises for use by the tenant, other than compliance with applicable statutes, regulations and ordinances.
 - Unless specified in a lease, a tenant only has the duty to use ordinary care for preserving the premises in a safe and good condition, and repairing all deteriorations or injuries to the premises caused by the tenant's want of ordinary care.
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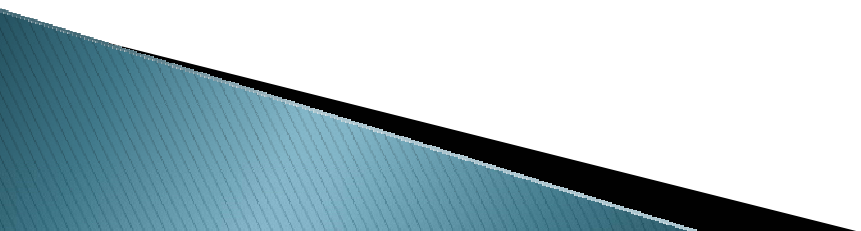
Lease Term – Maintenance and Repair

- Maintenance and Repair obligations and duties may be negotiated between the parties, allocating what types of maintenance and repairs each party is responsible for completing.
 - Lease can also have requirement that tenant inspect premises and maintain at all times in a safe condition.
 - Landlord can reserve the right to enter premises for inspection purposes and carry out any repairs or maintenance that tenant fails to undertake, and do so at tenant's cost and expense.
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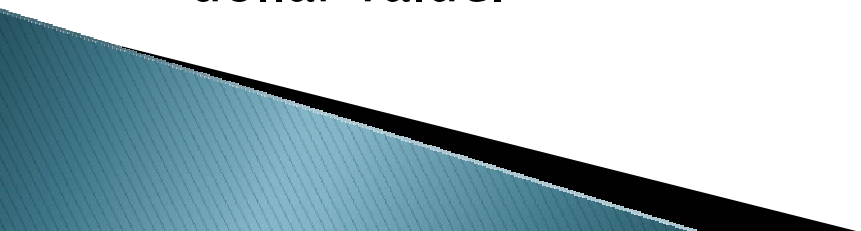
Lease Term – Restoration

- Without an express term in the lease, a tenant must restore premises to the landlord unimpaired beyond ordinary wear and tear.
 - A lease term may require tenant to restore premises in the same condition as at the beginning of the lease. The tenant is required to remove any alterations and restore premises to their original condition, at its cost and expense.
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Lease Term – Indemnification Requirements

- Indemnification provision should cover not only tenant but also its officers, agents, employees, sublessees, licensees or invitees.
 - Leases may have a specific term requiring the tenant to indemnify the landlord for damages caused by third-parties, including tenant's invitees.
 - Indemnification provisions are generally enforceable except for fraudulent, willful or negligent violations of the law by the landlord.
 - Indemnification term often excludes liabilities that arise from the sole negligence or willful misconduct of landlord.
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Lease Term – Insurance Requirements

- In the absence of lease provisions, a tenant does not have an obligation to procure insurance against risks for the benefit of the landlord. The parties can agree that either or both will provide certain types of insurance and that the insurance will protect the interests of both parties.
 - The insurance provision in the lease should specify what insurance coverage is required, who is responsible for payment of premiums and which parties are to have the benefit of the insurance.
 - The lease can also require the tenant to file written accident reports for any known accident or incident causing death or injury to persons or damage to property in excess of a certain dollar value.
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Lease Term – Port Tariff Applies to Lease

- A marine terminal lease may provide for application of the port tariff to the tenant and its operations:

Applicability of Tariff. Except as otherwise provided in this Agreement, all rates, terms and conditions of Tariff No. ____, as it exists on the Occupancy Date and as it subsequently may be amended or superseded, shall at all times be applicable to this Agreement. It is the intent of the parties hereto, however, that Tenant's obligation to pay compensation to City for the use of the premises shall be as prescribed in this Agreement. When there is any conflict between the provisions of this Section 3 and the provisions of the Tariff, this Agreement shall at all times prevail.

Port Tariff Applying to Tenant

- Prohibition against trespassing:

“It shall be unlawful for any person to trespass by entering or being in or upon any dock, wharf premise or any other area in the Harbor District which is used for the storage or handling of cargo or where signs are posted displaying the words, "Keep Out, Trespassing Prohibited," without having first obtained permission from the Board of Harbor Commissioners, the Executive Director, or the person in lawful possession of any such area.”

- Rules regarding wharves:

“Whenever any wharf or any portion thereof located at the Harbor is in such defective or damaged condition as to be unsafe or dangerous to persons or property on or near the same, it shall be the duty of the owner, agent or person in charge thereof to immediately fence such unsafe or dangerous wharf, or portion thereof, and keep the same so enclosed until the necessary repairs are made. It shall be unlawful for any person to fail, neglect, or refuse to comply with any notice or order from the Board that such unsafe or dangerous wharf, or portion thereof, be immediately repaired or fenced off as aforesaid. In the event of the failure of such person to immediately fence off and enclose such unsafe or dangerous wharf, or portion thereof, or to comply with any such notice from the Board, the Board or the Executive Director may enter thereon and fence off and enclose the same at the sole expense of the owner, agent or other person having charge of such wharf. It shall be unlawful for any person to interfere with or disturb in any manner any such warnings and fences, or other barriers, which may have been erected for the purposes aforesaid.