

## HOW CAN I PRESERVE MY AUDIT RIGHTS?

Over the years, a tenant's right to audit its landlord's determination of the annual operating expenses, taxes, utilities and other additional rent charges has evolved from a very straight forward premise to one that is the subject of much negotiation before the lease is executed. While many leases continue to allow the tenant virtually unconditional audit rights, more landlords have begun to require tenants to meet various conditions in order to audit, and sometimes seek to impose added restrictions on the tenant's right to audit. Some landlords have gone so far as to include an added audit completion deadline in addition to the typical audit window. We refer to these more onerous audit provisions as containing a "double paned" window.

Most audit windows are the "single paned" window variety, and these audit windows can be propped open, thereby preserving a tenant's right to audit at a later date – even years later. A "single paned" window simply requires you to notify the landlord of your intent to audit. A "double paned" window effectively requires the tenant to then complete its audit by a certain date. In other words, if your lease includes a "single paned" audit window simply requiring you to tell the landlord you are going to perform an audit, but does not include the "double paned" window requiring you to then complete that audit within a set time period, you can preserve your audit rights by sending the landlord a notice each year – within the time constraint of the "single paned" window – of your intent to audit. CyberLease's clients have used this tactic successfully for years, and ultimately saved millions of dollars as result when they eventually conducted their audits.

### 5 Simple Steps To Preserve Audit Rights

1. **Track the dates when you receive each reconciliation statement, and date stamp them upon receipt.**
2. **Determine whether you have a "single paned" or a "double paned" audit window.**
3. **Calculate the date by which you must notify your intent to conduct and, if applicable, complete any audit.**
4. **Determine the landlord's current official notice address(es).** Since many buildings change hands during the term of a lease, be sure to check your files for formal notices from the current landlord directing you where to send all official notices after they acquired the building, including any required copies to other offices, outside counsel, etc.
5. **Notify the landlord of your intent to conduct an audit by sending a letter to its official notice address(es), in strict accordance with the terms of the notice provision of the lease, stating as much.** Note that some leases will require you to specify in which respects you are contesting the landlord's charges (e.g., "the insurance costs have increased significantly," "management fee costs and utility expenses are greater than market rates for comparable buildings," etc.), and a Preliminary Review will help you to identify those specific issues. Also, in the case of leases with a "double paned" window, you will want to have first determined whether an audit of that year's operating expenses is truly warranted, since simply notifying your intent to audit without actually completing an audit of these leases will likely prove to be ineffective.

## FAQs

**Q. Do you have a sample letter for preserving audit rights / telling a landlord of your intent to audit?**

A. Yes. [CLICK HERE](#) to download sample letter.

**Q. Why do I need to send the “intent to audit” letter in accordance with the notice provision of the lease?**

A. It is considered to be a formal notice and it is therefore necessary to send it in strict accordance with the notice provision of the lease, including any requisite copies to other landlord addresses listed in the lease or its notice provision.

**Q. What should I do to preserve my audit rights in new leases?**

A. When negotiating new leases, understand what your rights are if your lease is silent with respect to audit rights. In many states, a “silent” audit right is better than an overly conditioned / restricted audit right.

*Don’t agree to a prohibition on contingent fee arrangements without understanding the cost of an audit performed on a flat fee or hourly fee basis.*

*In all new leases require the landlord to send copies of notices, including annual reconciliation statements, to your broker and/or your outside counsel. There is new case law related to this which can help re-open audit windows previously thought to have closed.*

**Q. I’m not sure if I have a “single paned” or a “double paned” window – what should I do?**

A. [CLICK HERE](#) to Contact us for help.