

MIND YOUR BUSINESS

Paying customers crowded out of cafe by free-wireless users

[Ilana DeBare](#)

Wednesday, December 14, 2005

Q:I had a restaurant that closed, and I assigned the lease to another restaurateur. He went out of business too, and stopped making payments on the lease. Now the landlord is suing both him and me. I am a single mother with no assets except my home. I'm worried that I could lose my home because of this suit. Is there anything I can do to protect myself? I've heard about something called homesteading.

-- Over My Head in Oakland

A: There is a clear lesson here: If you ever need to transfer a lease to someone else, make sure all your rights and obligations are fully assigned to the new tenant so the landlord no longer holds you responsible. You may have to pay the landlord something for the privilege of getting your name off the lease, but it's worth it.

"The problem with assigning a lease is that if you don't get the landlord to buy off on it, you will always remain liable on anything you assign," said Sandy Shepard, an attorney with Good Solutions legal and business consulting in San Rafael.

You don't have a lot of options at this point. Both you and the other restaurateur are responsible for the rent until the landlord finds a new tenant. If you lose in court, you easily could end up with a lien against your house. In a worst-case scenario, you could be required to sell the house to pay your debt.

The California homestead exemption allows debtors to retain some of the equity from a forced sale of their home -- \$50,000 if you are single or \$75,000 if you have dependents living at home with you. (It's higher than that if you are disabled, over 65, or over 55 with a low income.)

That sounds good in theory. But \$75,000 won't go far in buying a replacement home in the Bay Area.

Your best bet is to hire a lawyer and try to cut a deal with the landlord. Offer to pay him a percentage of the rent owed, and let him go after the other restaurateur for the rest. And do this sooner rather than later.

"If this woman has equity in her house, she can get a line of credit to pay off the landlord," Shepard said. "Suck it up, get a line of credit, and pay it off. Pay a lawyer on the front end to do this for you. Because if you end up going to court, the legal fees are going to kill you."

Ilana DeBare wants to hear from you. Send your smallbusiness questions to mindyourbiz@sfrchronicle.com or to Mind Your Business, San Francisco Chronicle, 901 Mission St., San Francisco, CA 94103. We can't respond to every question in print, but we will answer as many of them as we can.