

You are a Landlord and Your Tenant is Financially Stressed – What Should You Do?

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Tenant Bankruptcy Cases Significantly Impact Landlords

In the current economic environment, many commercial tenants are experiencing severe financial distress. This leads to an increasing risk of tenants filing bankruptcy, which will impact landlords on several levels. Even before a tenant files bankruptcy, the tenant's financial distress itself gives rise to various legal considerations that can affect the landlord's loss exposure.

Prior to the bankruptcy filing, a number of matters – including tenant delinquencies, rent deferrals and abatements, lease transfers and assignments, the status of lease guarantees and security deposits, and the status of insurance maintained by the tenant with respect to its premises, as well as the tenant's overall level of distress – require careful consideration by a landlord in order to help avoid or mitigate the landlord's risks of (i) exposure to loss, and (ii) encountering complications in its attempts to quickly assert control over the tenant's leasehold interest.

After the bankruptcy filing, the landlord must proceed with caution in connection with enforcing its rights. The Bankruptcy Code (the "Code") imposes an immediate "automatic stay" in favor of any debtor, which is essentially an injunction intended to protect a debtor and its property against any action that may be taken by a creditor without obtaining prior bankruptcy court authorization. The automatic stay applies both in situations where the debtor itself (e.g., a tenant) files a "voluntary" bankruptcy or another party files an "involuntary" bankruptcy against the debtor. In order to proceed against a debtor that is subject to a stay, relief from the stay – which may only be granted by the bankruptcy court itself – must be obtained prior to the taking of any action by a creditor. Violations of the stay are subject to a contempt action before the bankruptcy court.

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