

Responsibilities of a bankrupt retail tenant

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The Record

Q. I own a shopping center and one of my tenants just filed for bankruptcy. What happens to the remainder of that tenant's lease?

When a shopping center tenant files for bankruptcy protection before its lease has expired, the tenant must either assume or reject the lease. Generally, that decision must be made no later than 210 days after the filing of the bankruptcy case. Pending that decision, the tenant must pay all rent that comes due after the bankruptcy filing. If the debtor rejects the lease, it must surrender the premises to the landlord immediately, and the landlord is granted an unsecured claim in the bankruptcy case for any unpaid rent due before the bankruptcy filing, plus the greater of one year's rent due under the lease or 15 percent of the remaining lease term, not to exceed three years.

If, however, the tenant opts to assume the lease and either remain in the premises or assign the lease to a third party, the tenant must cure any arrears, compensate the landlord for any monetary losses resulting from its default, and provide "adequate assurance" of future performance under the lease.

Pursuant to this latter requirement, the tenant must demonstrate: the source of rent payments and other consideration due under the lease, as well as the financial condition of any proposed assignee; that any percentage rent due under the lease will not decline substantially; that all provisions of the lease, including any radius, location, use or exclusivity provisions, will be assumed;

and that assumption or assignment will not disrupt the tenant mix in the shopping center.

For a detailed explanation of his rights, a commercial landlord should consult an attorney if his tenant files for bankruptcy.

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