

PUBLICATION

Quick and Easy Guide to Retail Tenant Bankruptcy

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Landlord's Rights when a Tenant files:

- If the lease expired prior to the bankruptcy filing, the Landlord may immediately exercise its rights under the lease and state law.
- Prior to assumption or rejection of the lease, the Tenant must perform all lease obligations.
- Under certain situations, the Landlord may not be required to provide services or supplies incidental to the lease before assumption.
- In a Chapter 7 case, if the Tenant does not assume or reject the lease within 60 days following the commencement of the case, or within such additional time as the court allows, then the contract or lease is deemed rejected.
- In a Chapter 11 case, the lease is deemed rejected and must be immediately surrendered to the Landlord by the earlier of 120 days after commencement of the case or the date of plan confirmation. The court may extend the 120-period for 90 days. Any further extensions require Landlord approval.

Landlord's Rights when a Tenant Assumes or Assigns a Lease:

- In order to assume a lease, any and all lease defaults must be cured and the Tenant (or assignee) must compensate the Landlord for its actual losses and provide assurance of future performance of the Lease.
- In order to assign a Lease, the Tenant must assume the Lease and provide assurance of the assignee's future performance of the Lease.
 - Assurance of future performance means:
 - Source of rent will be similar to the tenant as of beginning of lease.
 - Percentage rent will not decline substantially.
 - No breach of other lease in shopping center.
 - Assignment will not disrupt any tenant mix.

Landlord's Rights when a Tenant Rejects a Lease:

- If a Tenant rejects the Lease, the breach is deemed to have occurred immediately before the petition date (the initial bankruptcy filing date) and the Landlord has an unsecured claim against the Tenant.
- If the Tenant assumes and then rejects the Lease, the Landlord has a priority claim and an unsecured claim against the tenant (that is superior to pre-petition claims).

Baker, Donelson's Retail Bankruptcy Team is a group of business, retail development and bankruptcy lawyers with unique experiences and skills to navigate the world of retail bankruptcy both from the developer's point of view and the retailer's point of view, including, for example, a former RTC lawyer and a former counsel for a Chapter 11 retailer. For further information regarding retail and other bankruptcies, please contact Baker Donelson's Retail Bankruptcy Team at dkillebrew@bakerdonelson.com or tlupinacci@bakerdonelson.com.