



BENJAMIN S.

**CROCKER**

SYMPOSIUM 2009

# **LEASES IN DISTRESS – REAL ANSWERS TO REAL QUESTIONS**

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## Pre-Workout Issues and Considerations

- What are the warning signs of a Tenant heading towards trouble? What are the first steps for a Landlord to take when they see those warning signs?
- From a Tenant's perspective, what strategies can be used to obtain rent relief or other adjustment of rent obligations?
- As a Landlord, how should your strategy change if you believe a Tenant is on the brink of bankruptcy, or if the Tenant has actually threatened bankruptcy? What steps should you take?

## Pre-Workout Issues and Considerations

- From the other perspective: What steps should you take if you are a Tenant who believes that your Landlord may declare bankruptcy, or the Building you are occupying may be the subject of foreclosure?
- Should a Landlord consider the use of a pre-workout agreement when dealing with a defaulting tenant or a tenant requesting a rent relief or a lease modification?

## Lease Security Issues

- What are the advantages and pitfalls of cash security deposits, guaranties and letters of credit?
- What are the issues to consider in deciding which form of security is “best” or “most advisable for a landlord?
- Is it advisable to always hold some cash security?
- When should a Landlord exercise its rights with respect to lease collateral, guaranties, letters of credit, and when should a Landlord wait?

## Lease Security Issues

- How does a Tenant's bankruptcy affect the Landlord's right to apply or seek lease security?
  - When might a Landlord be "better off" if the Tenant does declare bankruptcy? When should a Landlord file a "proof of claim" in a Tenant' bankruptcy?
- What provisions should be included in a lease workout amendment relating to lease security?
- If a Landlord seeks prepaid rent for several months, or applies lease security to future rent, are these amounts at risk in a tenant bankruptcy?
- Many Landlords now seek to defer rent, which tenant is to pay back later with interest. Good strategy?

## Workout Implementation Strategies

- What are the strategies for a Landlord to consider in determining whether to enter into a "lease workout"?
- What are the essential elements of a lease workout agreement/workout amendment?
- Can a Landlord "bankruptcy proof" a lease workout amendment?
- What elements should a Tenant seek in a lease workout amendment?

## Workout Implementation Strategies

- When should a Lender be involved in a lease workout amendment and when should a Tenant demand that the Lender approve or consent to a lease workout amendment?
- What financial information can and should be obtained from a Tenant or a Landlord, both initially and on an ongoing basis?
- Confidentiality concerns – what type of confidentiality provision should be a part of a lease workout agreement? What is enforceable?