

# Real Estate Journal

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## Bankruptcy implications for commercial landlords

When a commercial tenant files a chapter 11 bankruptcy case, a landlord should take steps to protect its rights. However, the automatic stay temporarily halts a landlord's efforts to collect past due rent and to pursue eviction proceedings. The tenant is required to pay monthly rent going forward, on time in accordance with the lease, and to pay pro-rated rent for the month of the bankruptcy filing. If the tenant fails to pay post-bankruptcy rent when due, the landlord will be able to obtain relief from the automatic stay to commence or resume state court eviction proceedings.

A debtor has 120 days to determine whether to assume or reject a lease of nonresidential real property. This time period can be extended for an additional 90 days with court approval, but further extensions require the affirmative consent of the landlord. If the debtor assumes the lease, then the debtor must pay all rent arrears in full, including any amounts owed prior to the bankruptcy filing. A rejection of the lease acts as a breach effective as of the filing date, but a landlord's damage claim for termination of the lease is capped pursuant to the Bankruptcy Code. Any unpaid rent that accrued after the bankruptcy filing remains required to be paid in full.

When a commercial tenant files bankruptcy, a landlord should retain counsel to appear in the case and protect the landlord's rights.

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