

Act Promptly if Your Tenant Files Bankruptcy

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A landlord should act promptly if one of its tenant files for bankruptcy, and should utilize an attorney experienced in representing landlords in bankruptcy cases.

Why act promptly?

- Many important issues affecting landlords are decided at the hearing of the "first day" motions, a hearing that, as its name implies, is held within the first few days immediately following the filing of a bankruptcy case. For example, many lenders, as part of the financing extended to the debtor-in-possession following a Chapter 11 bankruptcy filing, seek to impose a lien on debtor's leasehold interests, notwithstanding lease provisions prohibiting the mortgage, pledge or assignment for security of the lease. In the current economic environment, many Chapter 11 retail debtors seek authority to conduct store closing sales in the first stage of the case, where proposed sale guidelines may seek expedited approval of elements objectionable to landlords (e.g., exterior banners in shopping centers, use of "sign walkers," etc.).
- It is not uncommon for bankruptcy courts to order that landlords who are represented at the first day hearing receive greater rights (or have their rights impaired to a lesser degree) than landlords who are not represented. Many orders expressly grant separate relief to "objecting landlords." In a recent retail case in Southern California, the landlords of ten store locations (out of approximately 30) received payment of "stub rent" (pro-rated rent for the post-petition portion of the month following debtor's bankruptcy filing), while those landlords that did not raise the issue at the inception of the case did not.

Why engage experienced counsel?

- Experienced counsel can provide the best representation in this specialized and fast-moving arena.
- If the bankruptcy concerns a retailer who is going out of business, experienced counsel can advise the Court of what other courts have done regarding restrictions on signage and other issues that commonly arise in going out of business sales, as well as the procedures for the prospective marketing and assignment of debtor's leasehold interests.

A landlord should therefore have a relationship with a bankruptcy attorney, experienced in the bankruptcy aspects of landlord-tenant law, who can quickly "mobilize" following the filing of a new case and provide meaningful representation at the hearing of the first day motions and thereafter.

Why engage Allen Matkins?

Allen Matkins' bankruptcy attorneys have handled dozens of retail tenant bankruptcies for our shopping center clients throughout the United States. We are experienced in handling the issues important to protecting the interests of landlords impacted by the bankruptcy of a retail tenant. We often collectively represent multiple landlords in a single case, reducing client costs through shared fees on common issues, while allowing for greater collective "clout" and involvement in resolving issues among the various constituencies in a bankruptcy case.

Allen Matkins

Recent cases in which we represent or have represented landlords include:

Retailer	Location of Bankruptcy Case
The Right Start	Woodland Hills, CA
Shane Co.	Denver, CO
Circuit City	Richmond, VA
Barbeques Galore	Woodland Hills, CA
Shoe Pavilion	Woodland Hills, CA
Steve & Barry's	New York
Babystyle	Los Angeles, CA
20/20 Fashions	San Francisco, CA
Linens N Things	Delaware
Sharper Image	Delaware
Wickes Furniture	Delaware
Mariposa	Seattle, WA
Alert Cellular	Santa Barbara, CA

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