

## 1: Are Apartment Leases Dischargeable in Chapter 7 Bankruptcy? | LegalZoom Legal Info

*The Chapter 7 bankruptcy trustee has 60 days after you file for bankruptcy to decide whether to assume (continue in force) an executory contract or unexpired lease as part of the property of the bankruptcy estate.*

The Bankruptcy Code, which is codified as title 11 of the United States Code, has been amended several times since its enactment. It is the uniform federal law that governs all bankruptcy cases. The procedural aspects of the bankruptcy process are governed by the Federal Rules of Bankruptcy Procedure often called the "Bankruptcy Rules" and local rules of each bankruptcy court. The Bankruptcy Rules contain a set of official forms for use in bankruptcy cases. The Bankruptcy Code and Bankruptcy Rules and local rules set forth the formal legal procedures for dealing with the debt problems of individuals and businesses. There is a bankruptcy court for each judicial district in the country. Each state has one or more districts. There are 90 bankruptcy districts across the country. The court official with decision-making power over federal bankruptcy cases is the United States bankruptcy judge, a judicial officer of the United States district court. The bankruptcy judge may decide any matter connected with a bankruptcy case, such as eligibility to file or whether a debtor should receive a discharge of debts. Much of the bankruptcy process is administrative, however, and is conducted away from the courthouse. In cases under chapters 7, 12, or 13, and sometimes in chapter 11 cases, this administrative process is carried out by a trustee who is appointed to oversee the case. A typical chapter 7 debtor will not appear in court and will not see the bankruptcy judge unless an objection is raised in the case. A chapter 13 debtor may only have to appear before the bankruptcy judge at a plan confirmation hearing. Usually, the only formal proceeding at which a debtor must appear is the meeting of creditors, which is usually held at the offices of the U. This meeting is informally called a "meeting" because section of the Bankruptcy Code requires that the debtor attend this meeting so that creditors can question the debtor about debts and property. A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a decision: This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from ever taking any action against the debtor to collect those debts. This publication describes the bankruptcy discharge in a question and answer format, discussing the timing of the discharge, the scope of the discharge what debts are discharged and what debts are not discharged , objections to discharge, and revocation of the discharge. It also describes what a debtor can do if a creditor attempts to collect a discharged debt after the bankruptcy case is concluded. Six basic types of bankruptcy cases are provided for under the Bankruptcy Code, each of which is discussed in this publication. The cases are traditionally given the names of the chapters that describe them. These cases are called "no-asset cases. In most chapter 7 cases, if the debtor is an individual, he or she receives a discharge that releases him or her from personal liability for certain dischargeable debts. The debtor normally receives a discharge just a few months after the petition is filed. Amendments to the Bankruptcy Code enacted in to the Bankruptcy Abuse Prevention and Consumer Protection Act of require the application of a "means test" to determine whether individual consumer debtors qualify for relief under chapter 7. Chapter 9 , entitled Adjustment of Debts of a Municipality, provides essentially for reorganization, much like a reorganization under chapter Only a "municipality" may file under chapter 9, which includes cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts. Chapter 11 , entitled Reorganization, ordinarily is used by commercial enterprises that desire to continue operating a business and repay creditors concurrently through a court-approved plan of reorganization. The chapter 11 debtor usually has the exclusive right to file a plan of reorganization for the first days after it files the case and must provide creditors with a disclosure statement containing information adequate to enable creditors to evaluate the plan. The court ultimately approves confirms or disapproves the plan of reorganization. Under the confirmed plan, the debtor can reduce its debts by repaying a portion of its obligations and discharging others. The debtor can also terminate burdensome contracts and leases, recover assets, and rescale its operations in order to return to profitability. Under chapter 11, the debtor normally goes through a period of consolidation and emerges with a

reduced debt load and a reorganized business. Chapter 12 , entitled Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income, provides debt relief to family farmers and fishermen with regular income. The process under chapter 12 is very similar to that of chapter 13, under which the debtor proposes a plan to repay debts over a period of time " no more than three years unless the court approves a longer period, not exceeding five years. There is also a trustee in every chapter 12 case whose duties are very similar to those of a chapter 13 trustee. Chapter 12 allows a family farmer or fisherman to continue to operate the business while the plan is being carried out. Chapter 13 , entitled Adjustment of Debts of an Individual With Regular Income, is designed for an individual debtor who has a regular source of income. Chapter 13 is often preferable to chapter 7 because it enables the debtor to keep a valuable asset, such as a house, and because it allows the debtor to propose a "plan" to repay creditors over time " usually three to five years. Chapter 13 is also used by consumer debtors who do not qualify for chapter 7 relief under the means test. Unlike chapter 7, the debtor does not receive an immediate discharge of debts. The debtor must complete the payments required under the plan before the discharge is received. The debtor is protected from lawsuits, garnishments, and other creditor actions while the plan is in effect. The discharge is also somewhat broader i. The purpose of Chapter 15 , entitled Ancillary and Other Cross-Border Cases, is to provide an effective mechanism for dealing with cases of cross-border insolvency. This publication discusses the applicability of Chapter 15 where a debtor or its property is subject to the laws of the United States and one or more foreign countries. Although the Bankruptcy Code provides for a stockbroker liquidation proceeding, it is far more likely that a failing brokerage firm will find itself involved in a SIPA proceeding. The purpose of SIPA is to return to investors securities and cash left with failed brokerages. The bankruptcy process is complex and relies on legal concepts like the "automatic stay," "discharge," "exemptions," and "assume.

## 2: Your Bankruptcy Options with Personal Property Leases – Wasson & Thornhill

*What happens if you have a lease or contract that is still in force when you file for Chapter 13 bankruptcy? There are several options which depend, in part, on what the trustee wants: The trustee takes over the lease or contract, you continue with the lease or contract, or you get out of it altogether.*

Find out what happens to your car lease in Chapter 7 bankruptcy. Share on Facebook What happens to your car lease in Chapter 7 bankruptcy depends on whether you are behind on your payments and on what the bankruptcy trustee decides to do with the lease – the trustee can assume or reject the car lease. But before you make any decisions, you should decide whether keeping the vehicle is an affordable option. The Automatic Stay and Car Leases in Chapter 7 When you file for bankruptcy, the automatic stay stops all collection actions, including efforts by a car lessor to repossess a leased car. However, if you are behind on your car lease payments when you file for Chapter 7 bankruptcy, your car lessor will likely ask the court to lift end the automatic stay. It does this by filing a motion for relief from automatic stay. If the lessor is successful with this motion, it may pursue state law remedies to collect on the debt you owe, including repossession of your car. If the trustee assumes the lease, the lease continues to be enforceable as written. The trustee would only assume the lease if this would monetarily benefit the bankruptcy estate. For example, if the trustee would be able to lease the vehicle to someone else for more money than the lease payment and the estate would gain income, the trustee may decide to assume the lease. If there is no benefit to the estate, then the trustee will reject the lease, basically stating that the lease is not an asset of the estate. If the trustee does not assume it within 60 days after the case is filed, then the lease is deemed rejected. At that point, the automatic stay ends. Even though the bankruptcy trustee must first reject the lease before you can assume the lease or surrender the car, you must generally indicate your preference ahead of time in your bankruptcy papers. You must provide a copy of this form to the trustee and the car lessor. Surrendering the Car If you want to surrender the car, you must do so no later than 45 days after the case is filed. Once you surrender the vehicle, either voluntarily or involuntarily after the stay is lifted, the creditor will sell it and then apply the proceeds, minus administrative fees, to the balance owed. If the sale proceeds do not pay off the balance of the loan, then the remaining amount owed is an unsecured debt. The unsecured debt is generally dischargeable in your bankruptcy. To learn how unsecured debts are treated in Chapter 7, see Secured v. Unsecured Debt in Chapter 7. Assuming the Car Lease If you want to assume the lease, review the written lease carefully to make sure you can still afford the terms. Many car leases contain undesirable clauses such as mileage limitations, odd term lengths, or residual or other fees that may no longer be in your best interest. If you assume the car lease, then the lease continues in full force and effect, as written. To assume the car lease you must notify the car lessor in writing. The car lessor is not required to respond, but it might. Car lessor says yes. The car lessor may notify you that it will allow you to assume the lease. If so, it can require you to cure any outstanding defaults. After 30 days you should then notify the car lessor in writing that the lease is in fact assumed. Car lessor says no. If the car lessor does not agree to your assuming the lease, or you cannot work out an agreement on this issue, then it can pursue its remedies under state law usually that means repossession of the car. If the car lessor does not respond. If the car lessor does not respond, you should not rely on its silence as an agreement to continue with the lease. The car lessor may have already decided to pursue its remedies under state law. Some bankruptcy courts have decided that unless you sign and file a valid reaffirmation agreement regarding the car lease, you are not liable for future unpaid amounts on the car lease and the debt is discharged. To learn more, see Reaffirmation Agreements in Chapter 7.

### 3: The "ABCs" of Commercial Leases in Bankruptcy - Articles - Jordan Ramis

*The bankruptcy law considers unpaid rent as a form of unsecured debt; this debt may be discharged at the end of the bankruptcy process. However, your landlord may evict you for non-payment of current and future rent.*

Two issues arise in such situation, eviction of tenants in default and the effect of the bankruptcy on the lease. When a tenant files a bankruptcy the automatic stay prevents Landlords from pursuing an eviction or any other proceeding for money damages. If the landlord has, prior the bankruptcy filing, obtained a state court order granting the landlord possession of the property, the stay will automatically cease 30 days after filing. The landlord then can proceed with the eviction process to obtain possession of the real property. The personal property which the debtor has within the residence can not be taken, since it now belongs to the bankruptcy estate. The debtor may prevent the stay from ceasing by filing and serving a certification within the 30 day period which shows that the tenant can or has satisfied the default in payments which allowed the judgment for possession and if the payment has not been made directly to the landlord that the debtor has deposited any rents coming due in the day period with the bankruptcy court clerk. The landlord has a right to contest the certification in which case the Court will hold a quick hearing to determine the truth. The tenant who is filing bankruptcy must be aware that their right to stay in the leased property may be dramatically limited if they delay filing until after the landlord has a judgment granting the landlord possession of the property. There are also provisions which can provide landlords quick relief if the reason for an eviction is based on endangerment of the property or the illegal use of controlled substances on the property. The landlord can obtain a relief from stay by filing with the bankruptcy court a certification that the eviction action has been filed for such reasons or that, within 30 days prior to the petition date, the debtor has endangered the property or used illegal drugs on the property. The debtor then has 15 days to file a response to the certification or the court will grant the relief from stay allowing the eviction process to proceed.

**Assumption and rejection of Leases.** Bankruptcy law also requires that a lease must be assumed within a certain time period. In Chapter 7 that time period is 60 days, which can be extended for good cause, usually because a trustee believes that the lease is assignable and the terms are favorable enough that others will pay money for the opportunity to assume the lease. In a chapter 13 the debtor has until the confirmation of a chapter 13 plan to assume or reject the lease. The debtor or the trustee must pay the post petition lease and otherwise perform all of the obligations in the lease. If they do not the landlord can relief from the automatic stay and proceed to obtain possession of the premises. A lease that is not assumed in a timely fashion is deemed rejected and therefore terminated. If for some reason the landlord needs to have the lease rejected or assumed on an earlier date, they can file a motion to require the rejection or assumption to take place on a date before the code otherwise requires. If the lease is rejected either automatically or by written rejection, then the landlord may be entitled to damages. The lease is deemed rejected as of the date of the filing, the stay is lifted and the landlord may proceed under state law to take possession of the property. The landlord may file a claim in the bankruptcy court for rejection damages and for pre-petition rent that was due, and for any actual damages to the property. The rejection damages do have limitations so the claim should be prepared with the assistance of competent bankruptcy counsel. If a lease is assumed by a debtor or the trustee, they must show that any monetary defaults will be promptly cured and provide adequate assurances that the lease will be otherwise fully performed. In Chapter 13 cases, if there is an existing default in the payments, the debtor frequently can propose that the cure will come from their chapter 13 plan payments. Landlords can and should request that those cure payments be paid to the landlord with a higher priority and a shorter term than the full length of the plan. Landlords are well advised to consult with a competent bankruptcy attorney concerning their rights. The debtor usually has an experienced bankruptcy working for them who will act to protect the debtor. If the landlord sits upon his rights those rights may be permanently prejudiced. Likewise if the landlord proceeds without representation or ignores the bankruptcy proceeding, they may well find themselves in contempt of court. Generally the provisions in the code are similar for commercial landlords as they are in consumer cases. The primary differences are as follows: Commercial tenants has an expanded day period to assume or reject a lease, and upon request of the debtor the

court can only expand that time by 90 days, unless the landlord consents to a longer extension of time. Commercial tenants have the same day time period to designate a replacement tenant. The replacement tenant however must fully perform the monetary and non-monetary terms of the lease. There are special provisions in the bankruptcy code regarding shopping center leases and protecting sub-tenants. If you are involved with either of these issues you should consult your attorney since your rights will likely differ from above. This page was last updated: March 24, 2014. Getting in financial hot water is not always avoidable. Getting out may be an option. To learn more call:

## 4: Chapter 11 - Bankruptcy Basics | United States Courts

*Problems with commercial leases of real property are one of most common precursors to a Chapter 11 Business Reorganization bankruptcy filing, at least in this attorney's experience.*

Buying Leases Out of Bankruptcy: Real Estate and Environmental, Spring Whether in a Chapter 11 Reorganization or Chapter 7 Liquidation bankruptcy proceeding, all unexpired leases become property of the bankruptcy estate. The bankrupt debtor-in-possession or a trustee if appointed each referred to in this article as the trustee has the right to assume or reject all unexpired leases and other executory contracts within days of the date of the bankruptcy the day period may be extended upon request by 90 additional days. If the trustee does not assume a lease within the or day period, the lease is deemed rejected. If the debtor in a Chapter 11 bankruptcy wishes to retain leases in some or all locations when it emerges from bankruptcy, it will need to assume the applicable leases. This article discusses strategies for landlords and prospective purchasers, as well as the process by which leases are assumed and assigned. Assumption and Assignment Solicitation of Offers. Initially, the trustee will need to promptly determine which, if any, leases have value and could potentially be sold. The decision to reject or to seek an assumption should be made early because until a lease is rejected, rent will continue to be due and payable. All monies received from the sale of leases will become property of the bankruptcy estate and used to pay creditors. Once an initial determination is made as to what if any leases are to be sold, the trustee will need to set up a process for soliciting bids ranging from a broker marketing the leases to an auction process either open or private bid. Although not required, a trustee may seek Bankruptcy Court approval for the process to solicit bids. As with any lease transaction, a prospective tenant will need to do an adequate due diligence investigation. When evaluating whether to purchase a lease out of bankruptcy, a prospective tenant should consider the following: Key lease terms and economic issues. Because the prospective tenant must assume the lease "as is," the purchaser must carefully review the lease and all associated documents to ensure that the lease, economic and other terms are satisfactory enough to submit a bid. Condition of premises and center. The prospective tenant should conduct an extensive investigation of the physical condition of the premises and center. This is particularly true in bankruptcy deals because the prior tenant may not have properly maintained the premises. Condition of landlord including landlord financing. Close attention should be paid to whether the landlord has financing on the center. Motion to Obtain Court Approval. If there is at least one offer, the trustee will need to determine whether the offer will satisfy the statutory requirements so the proposed assignment can be submitted for Bankruptcy Court approval. If there are multiple offers, the trustee will need to determine the best offer which may be difficult if some are monetary payments while others involve waiver or assignment of claims that may not be easily quantifiable to submit for Bankruptcy Court approval. To obtain Bankruptcy Court approval, the trustee and prospective purchaser must establish the following: All defaults are cured or adequate assurances are provided that such defaults will be promptly cured. This generally means all monetary defaults must be cured. Certain non-monetary defaults will also need to be cured to the extent they are curable by the trustee or assignee. Adequate assurances of future performance are provided. In a shopping center context, adequate assurances of future performance include: The evidence supporting the findings is submitted to the Bankruptcy Court by signed declaration. When assuming the lease, the potential assignee must agree to abide by all of the existing terms of the lease without modification. Potential Objections, Court Evaluation and Approval Prior to Bankruptcy Court approval, a landlord particularly if the landlord does not like the potential tenant seeking to assume the lease may raise objections that the potential tenant has not provided adequate assurances of future performance and the tenant is not suitable. The objections must be supported by declarations. If there are multiple offers to purchase a lease, a creditor may also object, asserting the proposed offer is not the highest offer. This objection is generally only made in a situation where the multiple offers are difficult to compare such as monetary offers vs. After receiving the motion from the trustee and any objections, the Bankruptcy Court must make a determination that: If the Bankruptcy Court determines the foregoing requirements are satisfied, the Court will order the leases assumed by and assigned to the selected purchaser. Conclusion

Despite the downturn in the economy, there are opportunities for prospective tenants and to some degree landlords when a retail tenant declares bankruptcy. The keys are understanding the process and properly evaluating the potential risks and value of the real estate assets of the bankruptcy estate.

## 5: Process - Bankruptcy Basics | United States Courts

*The process for rejecting leases and the landlord's rights and remedies in the event of a rejection are further specified in the Bankruptcy Code. If the debtor in a Chapter 11 bankruptcy wishes to retain leases in some or all locations when it emerges from bankruptcy, it will need to assume the applicable leases.*

If you are a landlord with a tenant that files for Chapter 11 Corporate Reorganization bankruptcy protection, what happens next? Assumption or Rejection of Leases by the Tenant In a Chapter 11 Reorganization bankruptcy proceeding, all unexpired leases become the property of the bankruptcy estate. After the bankruptcy filing, the debtor must decide whether it wishes to assume or reject its leases and other executory contracts. If the debtor assumes a lease, the lease will remain in effect. If the debtor rejects a lease, the tenant is deemed in breach, which enables the landlord to terminate the lease and the landlord is entitled to a claim for certain breach of lease damages as described below. The debtor must make this election within days after the date of the bankruptcy filing, although the period may be extended upon request by 90 additional days. If the debtor does not make any election or otherwise does not assume a lease within the or, as extended, day period, the lease is deemed rejected. If the bankrupt tenant remains in possession of the premises for at least the first 60 days after the bankruptcy filing, the landlord is entitled to rent as an administrative expense as an expense in the ordinary course of business payable in accordance with the terms of the lease. If the Tenant Assumes a Lease If the tenant assumes the lease, the tenant must promptly cure all existing defaults. This generally means all monetary defaults must be cured and certain non-monetary defaults will also need to be cured to the extent they are curable by the debtor. What constitutes a "prompt cure" is a matter of judicial discretion, but it usually means immediate cure. If and only if the tenant assumes the lease, the lease will then continue in full force and effect and any claims the landlord has on the lease for subsequent defaults by the tenant will be entitled to administrative priority. If the Tenant Rejects a Lease If the tenant rejects the lease or the lease is deemed rejected, the tenant is deemed to be in breach of the lease as of the date of rejection, which, if the bankruptcy court permits, could be retroactive to the date of the bankruptcy filing. Once the lease is rejected, a landlord has no ability to reinstate the lease and is entitled to a claim for the following three types of damages under the Bankruptcy Code: Rent Past Due Prior to Filing In the bankruptcy proceeding, the landlord has a claim for all rent and additional rent past due for periods before the bankruptcy filing. Administrative Claims As noted above, for at least the first 60 days of occupancy following the bankruptcy filing, the landlord has an administrative claim for rent and additional rent. The administrative claim is still behind secured creditors, but is ahead of all general unsecured creditors. As a general matter, the landlord is entitled to rent for this period as an administrative claim, but the issue of what is the correct amount of such rent the contract rate or value to the tenant is an issue litigated before bankruptcy courts. Breach of Lease Damages Future The final category of damages includes all future rent that would be due under the lease following the date of rejection – the "accelerated rent" under the lease. Under California law, the landlord has the obligation to attempt to mitigate damages, and the effect of such mitigation is offset against potential damages. After obtaining such relief, the landlord can commence and pursue an unlawful detainer action to seek to regain possession of the leased premises. Conclusion Although some believe the bankruptcy process can be unfair to landlords, the process is designed to protect the rights of all parties involved and, in fact, for certain claims, landlords are a privileged class.

### 6: Sussman Shank LLP | What to Do When a Commercial Tenant Files Bankruptcy

*If you have any unexpired personal property leases and you want to keep the leased furniture or other personal property, when you file a Chapter 7 "straight bankruptcy" you almost always have the option of "assuming" the lease.*

The tenant may already be behind in its rent at the time of its filing, and may be unwilling or unable to make timely payments going forward. Even worse, under bankruptcy law an "automatic stay" prevents or restricts the landlord from exercising remedies that otherwise might be available under state law. Landlords thus find themselves in a very challenging situation: All hope is not lost, however. With appropriate advance planning and an informed, practical approach, a landlord can minimize its risks and mitigate its damages. Rights and Obligations of Non-Residential Debtor-Tenants A non-residential debtor-tenant in a chapter 11 or 13 reorganization case has days in which to "assume" or "reject" its leases. If the tenant "assumes" a lease, both landlord and tenant must continue to perform their obligations under the lease, and the tenant also must "cure" any past monetary defaults including paying any rent in arrears or provide adequate assurance that it will promptly cure such defaults, and provide adequate assurance that it will meet all of its lease obligations going forward. The tenant also may be able to assign the lease to a third party - sometimes even if the lease contains an anti-assignment clause. Assumption is often, but not always, a favorable outcome for the landlord, because it requires payment of past monetary defaults and provides at least a measure of comfort that the tenant will meet its lease obligations going forward. If a debtor-tenant fails to assume or reject a lease by the applicable deadline, the lease will automatically be deemed rejected. For instance, although anti-assignment and automatic termination provisions are likely unenforceable in bankruptcy, a liquidated damages clause might help a landlord quantify its damages in the event of a lease rejection, making it easier to prove the amount of its claim against the tenant. If a landlord suspects its tenant is approaching bankruptcy, it also should aggressively enforce any rights available under state law. For example, a landlord can preemptively terminate a lease before a bankruptcy filing, if such an action is permissible under the terms of the lease and otherwise advantageous from a business perspective. A debtor cannot assume a lease that is no longer in effect when it files its bankruptcy case. In addition, a landlord may be contractually entitled to set off security deposits or other advances against amounts owed by the tenant. Of course, once a bankruptcy case is filed, a landlord must immediately cease any collection or eviction activities. Any efforts to collect from the tenant or to deprive it of its rights under the lease including setting off rent or other monetary obligations against deposits will violate the automatic stay, and may expose the landlord to serious sanctions. If the tenant seeks to assume or assign the lease, the landlord should make sure it receives any necessary cure payments and adequate assurance of future performance by the tenant or its assignee. If the lease is below-market, the debtor may assign it to a third party which may or may not be a desirable tenant for cash consideration, and the landlord will be obligated to perform its obligations under the lease until it expires, with the third party as tenant. The landlord may wish to negotiate a rejection of the lease with the original debtor-tenant to avoid that outcome. While determining whether to assume or reject, a tenant is required to perform its post-filing obligations under the lease, and if it fails to do so the landlord can seek to compel the payment of amounts due as administrative expenses. The landlord also may move to compel assumption or rejection of a lease, even before the expiration of the day statutory deadline for doing so. Finally, a landlord should be diligent in asserting its claims against the tenant, by filing a bankruptcy "proof of claim" within the timeframe established by the court for doing so. A party that fails to timely assert a claim in a bankruptcy case can be barred from any recovery from the bankruptcy estate. Landlords that are negotiating new leases or fear that existing tenants may be approaching a bankruptcy filing should consult legal counsel. You can reach Tim at or tsolomon sussmanshank.

### 7: What Happens to a Car Lease in Chapter 7 Bankruptcy? | [www.enganchecubano.com](http://www.enganchecubano.com)

*If the lease has value (it is a below market lease), the trustee, after filing a motion and giving the landlord an opportunity for a hearing, will assume the lease and assign it to a third party in exchange for a payment to the tenant's bankruptcy estate.*

Title Country Other Information: We also collect other information you may voluntarily provide. This may include content you provide for publication. We may also receive your communications with others through our Website and Services such as contacting an author through our Website or communications directly with us such as through email, feedback or other forms or social media. If you are a subscribed user, we will also collect your user preferences, such as the types of articles you would like to read. Information from third parties such as, from your employer or LinkedIn: We may also receive information about you from third party sources. For example, your employer may provide your information to us, such as in connection with an article submitted by your employer for publication. If you choose to use LinkedIn to subscribe to our Website and Services, we also collect information related to your LinkedIn account and profile. Your interactions with our Website and Services: As is true of most websites, we gather certain information automatically. We may also link this automatically-collected data to personal information, for example, to inform authors about who has read their articles. Some of this data is collected through information sent by your web browser. We also use cookies and other tracking technologies to collect this information. To learn more about cookies and other tracking technologies that JD Supra may use on our Website and Services please see our " Cookies Guide " page. How do we use this information? We use the information and data we collect principally in order to provide our Website and Services. More specifically, we may use your personal information to: Operate our Website and Services and publish content; Distribute content to you in accordance with your preferences as well as to provide other notifications to you for example, updates about our policies and terms ; Measure readership and usage of the Website and Services; Communicate with you regarding your questions and requests; Authenticate users and to provide for the safety and security of our Website and Services; Conduct research and similar activities to improve our Website and Services; and Comply with our legal and regulatory responsibilities and to enforce our rights. How is your information shared? Content and other public information such as an author profile is shared on our Website and Services, including via email digests and social media feeds, and is accessible to the general public. If you choose to use our Website and Services to communicate directly with a company or individual, such communication may be shared accordingly. Readership information is provided to publishing law firms and authors of content to give them insight into their readership and to help them to improve their content. We offer this functionality to help generate interest in our Website and content and to permit you to recommend content to your contacts. You should be aware that sharing through such functionality may result in information being collected by the applicable social media network and possibly being made publicly available for example, through a search engine. Your information may also be shared to parties who support our business, such as professional advisors as well as web-hosting providers, analytics providers and other information technology providers. To our affiliated entities and in connection with the sale, assignment or other transfer of our company or our business. How We Protect Your Information JD Supra takes reasonable and appropriate precautions to insure that user information is protected from loss, misuse and unauthorized access, disclosure, alteration and destruction. We restrict access to user information to those individuals who reasonably need access to perform their job functions, such as our third party email service, customer service personnel and technical staff. Where you use log-in credentials usernames, passwords on our Website, please remember that it is your responsibility to safeguard them. If you believe that your log-in credentials have been compromised, please contact us at [privacy@jdsupra.com](mailto:privacy@jdsupra.com). If you have reason to believe that a child under the age of 16 has provided personal information to us, please contact us, and we will endeavor to delete that information from our databases. The operators of such other websites may collect information about you, including through cookies or other technologies. If you are using our Website or Services and click a link to another site, you will leave our

Website and this Policy will not apply to your use of and activity on those other sites. We encourage you to read the legal notices posted on those sites, including their privacy policies. We are not responsible for the data collection and use practices of such other sites. This Policy applies solely to the information collected in connection with your use of our Website and Services and does not apply to any practices conducted offline or in connection with any other websites. By subscribing to our website, you expressly consent to your information being processed in the United States. Our Legal Basis for Processing: Generally, we rely on our legitimate interests in order to process your personal information. Please see Article 6 1 f of the E. Please see the "Your Rights" section of this Privacy Policy immediately below for more information about how you may request that we limit or refrain from processing your personal information. You can ask to review details about the information we hold about you and how that information has been used and disclosed. Note that we may request to verify your identification before fulfilling your request. You can also request that your personal information is provided to you in a commonly used electronic format so that you can share it with other organizations. Right to Correct Information: You may ask that we make corrections to any information we hold, if you believe such correction to be necessary. You also have the right in certain circumstances to ask us to restrict processing of your personal information or to erase your personal information. Where you have consented to our use of your personal information, you can withdraw your consent at any time. You can make a request to exercise any of these rights by emailing us at [privacy@jdsupra.com](mailto:privacy@jdsupra.com). We will make all practical efforts to respect your wishes. There may be times, however, where we are not able to fulfill your request, for example, if applicable law prohibits our compliance. Timeframe for retaining your personal information: We will retain your personal information in a form that identifies you only for as long as it serves the purposes for which it was initially collected as stated in this Privacy Policy, or subsequently authorized. We may continue processing your personal information for longer periods, but only for the time and to the extent such processing reasonably serves the purposes of archiving in the public interest, journalism, literature and art, scientific or historical research and statistical analysis, and subject to the protection of this Privacy Policy. For example, if you are an author, your personal information may continue to be published in connection with your article indefinitely. When we have no ongoing legitimate business need to process your personal information, we will either delete or anonymize it, or, if this is not possible for example, because your personal information has been stored in backup archives, then we will securely store your personal information and isolate it from any further processing until deletion is possible. Onward Transfer to Third Parties: When JD Supra discloses your personal information to third parties, we have ensured that such third parties have either certified under the EU-U. California Privacy Rights Pursuant to Section You can make a request for this information by emailing us at [privacy@jdsupra.com](mailto:privacy@jdsupra.com). These features, when turned on, send a signal that you prefer that the website you are visiting not collect and use data regarding your online searching and browsing activities. As there is not yet a common understanding on how to interpret the DNT signal, we currently do not respond to DNT signals on our site. We will be in contact with you by mail or otherwise to verify your identity and provide you the information you request. We will respond within 30 days to your request for access to your personal information. In some cases, we may not be able to remove your personal information, in which case we will let you know if we are unable to do so and why. If you would like to correct or update your personal information, you can manage your profile and subscriptions through our Privacy Center under the " My Account " dashboard. If you would like to delete your account or remove your information from our Website and Services, send an e-mail to [privacy@jdsupra.com](mailto:privacy@jdsupra.com). Please refer to the date at the top of this page to determine when this Policy was last revised. Any changes to our Privacy Policy will become effective upon posting of the revised policy on the Website. By continuing to use our Website and Services following such changes, you will be deemed to have agreed to such changes. Contacting JD Supra If you have any questions about this Privacy Policy, the practices of this site, your dealings with our Website or Services, or if you would like to change any of the information you have provided to us, please contact us at: These technologies automatically identify your browser whenever you interact with our Website and Services. Improve the user experience on our Website and Services; Store the authorization token that users receive when they login to the private areas of our Website. There are different types of cookies and other

technologies used our Website, notably: We use persistent cookies when we need to know who you are for more than one browsing session. For example, we use them to remember your preferences for the next time you visit. These images are placed on a web page or email and typically work in conjunction with cookies to collect data. We use these images to identify our users and user behavior, such as counting the number of users who have visited a web page or acted upon one of our email digests. We place our own cookies on your computer to track certain information about you while you are using our Website and Services. For example, we place a session cookie on your computer each time you visit our Website. We use these cookies to allow you to log-in to your subscriber account. In addition, through these cookies we are able to collect information about how you use the Website, including what browser you may be using, your IP address, and the URL address you came from upon visiting our Website and the URL you next visit even if those URLs are not on our Website. We also utilize email web beacons to monitor whether our emails are being delivered and read. We also use these tools to help deliver reader analytics to our authors to give them insight into their readership and help them to improve their content, so that it is most useful for our users. JD Supra also uses the following analytic tools to help us analyze the performance of our Website and Services as well as how visitors use our Website and Services: HubSpot - For more information about HubSpot cookies, please visit [legal](#). New Relic - For more information on New Relic cookies, please visit [www](#). Google Analytics - For more information on Google Analytics cookies, visit [www](#). To opt-out of being tracked by Google Analytics across all websites visit [http://www.google.com/ads/preferences](#): This will allow you to download and install a Google Analytics cookie-free web browser. Facebook, Twitter and other Social Network Cookies. Our content pages allow you to share content appearing on our Website and Services to your social media accounts through the "Like," "Tweet," or similar buttons displayed on such pages. To accomplish this Service, we embed code that such third party social networks provide and that we do not control. These buttons know that you are logged in to your social network account and therefore such social networks could also know that you are viewing the JD Supra Website. Controlling and Deleting Cookies If you would like to change how a browser uses cookies, including blocking or deleting cookies from the JD Supra Website and Services you can do so by changing the settings in your web browser. To control cookies, most browsers allow you to either accept or reject all cookies, only accept certain types of cookies, or prompt you every time a site wishes to save a cookie.

## 8: What Happens When a Tenant Files Bankruptcy & Breaks a Lease? | Home Guides | SF Gate

*What happens to your car lease in Chapter 7 bankruptcy depends on whether you are behind on your payments and on what the bankruptcy trustee decides to do with the lease - the trustee can assume or reject the car lease.*

A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals can also seek relief in chapter Background A case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a "reorganization" bankruptcy. In addition, no individual may be a debtor under chapter 11 or any chapter of the Bankruptcy Code unless he or she has, within days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. There are exceptions in emergency situations or where the U. If a debt management plan is developed during required credit counseling, it must be filed with the court. How Chapter 11 Works A chapter 11 case begins with the filing of a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. A petition may be a voluntary petition, which is filed by the debtor, or it may be an involuntary petition, which is filed by creditors that meet certain requirements. A voluntary petition must adhere to the format of Form 1 of the Official Forms prescribed by the Judicial Conference of the United States. Unless the court orders otherwise, the debtor also must file with the court: If the debtor is an individual or husband and wife , there are additional document filing requirements. Such debtors must file: A husband and wife may file a joint petition or individual petitions. The Official Forms are not available from the court, but may be purchased at legal stationery stores or downloaded from the Internet at www. The final installment must be paid not later than days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than days after the filing of the petition. If a joint petition is filed, only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. Upon filing a voluntary petition for relief under chapter 11 or, in an involuntary case, the entry of an order for relief, the debtor automatically assumes an additional identity as the "debtor in possession. The term refers to a debtor that keeps possession and control of its assets while undergoing a reorganization under chapter 11, without the appointment of a case trustee. The appointment or election of a trustee occurs only in a small number of cases. Generally, the debtor, as "debtor in possession," operates the business and performs many of the functions that a trustee performs in cases under other chapters. Generally, a written disclosure statement and a plan of reorganization must be filed with the court. The information required is governed by judicial discretion and the circumstances of the case. In a "small business case" discussed below the debtor may not need to file a separate disclosure statement if the court determines that adequate information is contained in the plan. The contents of the plan must include a classification of claims and must specify how each class of claims will be treated under the plan. Creditors whose claims are "impaired," i. After the disclosure statement is approved by the court and the ballots are collected and tallied, the court will conduct a confirmation hearing to determine whether to confirm the plan. In the case of individuals, chapter 11 bears some similarities to chapter The Chapter 11 Debtor in Possession Chapter 11 is typically used to reorganize a business, which may be a corporation, sole proprietorship, or partnership. A corporation exists separate and apart from its owners, the stockholders. A sole proprietorship owner as debtor , on the other hand, does not have an identity separate and distinct from its owner s. Accordingly, a bankruptcy case involving a sole proprietorship includes both the business and personal assets of the owners-debtors. Like a corporation, a partnership exists separate and apart from its partners. Section of the Bankruptcy Code places the debtor in possession in the position of a fiduciary, with the rights and powers of a chapter 11 trustee, and it requires the debtor to perform of all but the investigative functions and duties of a trustee. These duties, set forth in the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, include accounting for property, examining and objecting to claims, and filing informational reports as required by the court and the U. Other responsibilities include filing tax returns and reports which are either necessary or ordered by the court after confirmation, such as a final accounting. Railroad reorganizations have specific requirements under subsection IV of chapter 11, which will not be

addressed here. In addition, stock and commodity brokers are prohibited from filing under chapter 11 and are restricted to chapter 7. By law, the debtor in possession must pay a quarterly fee to the U. Should a debtor in possession fail to comply with the reporting requirements of the U. In North Carolina and Alabama, bankruptcy administrators perform similar functions that U. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U. For purposes of this publication, references to U. The committee is appointed by the U. Among other things, the committee: The Bankruptcy Code addresses this issue by treating a "small business case" somewhat differently than a regular bankruptcy case. A small business case is defined as a case with a "small business debtor. Determination of whether a debtor is a "small business debtor" requires application of a two-part test. In a small business case, the debtor in possession must, among other things, attach the most recently prepared balance sheet, statement of operations, cash-flow statement and most recently filed tax return to the petition or provide a statement under oath explaining the absence of such documents and must attend court and the U. The small business debtor must make ongoing filings with the court concerning its profitability and projected cash receipts and disbursements, and must report whether it is in compliance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and whether it has paid its taxes and filed its tax returns. In contrast to other chapter 11 debtors, the small business debtor is subject to additional oversight by the U. Early in the case, the small business debtor must attend an "initial interview" with the U. Because certain filing deadlines are different and extensions are more difficult to obtain, a case designated as a small business case normally proceeds more quickly than other chapter 11 cases. For example, only the debtor may file a plan during the first days of a small business case. This "exclusivity period" may be extended by the court, but only to days, and only if the debtor demonstrates by a preponderance of the evidence that the court will confirm a plan within a reasonable period of time. When the case is not a small business case, however, the court may extend the exclusivity period "for cause" up to 18 months. The term "single asset real estate" is defined as "a single property or project, other than residential real property with fewer than four residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental. The Bankruptcy Code provides circumstances under which creditors of a single asset real estate debtor may obtain relief from the automatic stay which are not available to creditors in ordinary bankruptcy cases.

**Appointment or Election of a Case Trustee** Although the appointment of a case trustee is a rarity in a chapter 11 case, a party in interest or the U. The court, on motion by a party in interest or the U. The trustee is appointed by the U. Alternatively, a trustee in a case may be elected if a party in interest requests the election of a trustee within 30 days after the court orders the appointment of a trustee. In that instance, the U. Section of the Bankruptcy Code requires the trustee to file a plan "as soon as practicable" or, alternatively, to file a report explaining why a plan will not be filed or to recommend that the case be converted to another chapter or dismissed. Upon the request of a party in interest or the U.

**The Role of an Examiner** The appointment of an examiner in a chapter 11 case is rare. The role of an examiner is generally more limited than that of a trustee. The examiner is authorized to perform the investigatory functions of the trustee and is required to file a statement of any investigation conducted. If ordered to do so by the court, however, an examiner may carry out any other duties of a trustee that the court orders the debtor in possession not to perform. Each court has the authority to determine the duties of an examiner in each particular case. Sometimes, the examiner may be directed to determine if objections to any proofs of claim should be filed or whether causes of action have sufficient merit so that further legal action should be taken. The examiner may not subsequently serve as a trustee in the case.

**The Automatic Stay** The automatic stay provides a period of time in which all judgments, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the filing of the bankruptcy petition. As with cases under other chapters of the Bankruptcy Code, a stay of creditor actions against the chapter 11 debtor automatically goes into effect when the bankruptcy petition is filed. The filing of a petition, however, does not operate as a stay for certain types of actions listed under 11 U. Under specific circumstances, the secured creditor can obtain an order from the court granting relief from the automatic stay. For example, when the debtor has no equity in the

property and the property is not necessary for an effective reorganization, the secured creditor can seek an order of the court lifting the stay to permit the creditor to foreclose on the property, sell it, and apply the proceeds to the debt. The Bankruptcy Code permits applications for fees to be made by certain professionals during the case. In very large cases with extensive legal work, the court may permit more frequent applications. Although professional fees may be paid if authorized by the court, the debtor cannot make payments to professional creditors on prepetition obligations, i. The ordinary expenses of the ongoing business, however, continue to be paid. Who Can File a Plan The debtor unless a "small business debtor" has a day period during which it has an exclusive right to file a plan. This exclusivity period may be extended or reduced by the court. But in no event may the exclusivity period, including all extensions, be longer than 18 months. After the exclusivity period has expired, a creditor or the case trustee may file a competing plan. A chapter 11 case may continue for many years unless the court, the U. Avoidable Transfers The debtor in possession or the trustee, as the case may be, has what are called "avoiding" powers. These powers may be used to undo a transfer of money or property made during a certain period of time before the filing of the bankruptcy petition. By avoiding a particular transfer of property, the debtor in possession can cancel the transaction and force the return or "disgorgement" of the payments or property, which then are available to pay all creditors. Generally, and subject to various defenses, the power to avoid transfers is effective against transfers made by the debtor within 90 days before filing the petition. But transfers to "insiders" i. In addition, under 11 U. Avoiding powers prevent unfair prepetition payments to one creditor at the expense of all other creditors. Cash Collateral, Adequate Protection, and Operating Capital Although the preparation, confirmation, and implementation of a plan of reorganization is at the heart of a chapter 11 case, other issues may arise that must be addressed by the debtor in possession. The debtor in possession may use, sell, or lease property of the estate in the ordinary course of its business, without prior approval, unless the court orders otherwise. If the intended sale or use is outside the ordinary course of its business, the debtor must obtain permission from the court. A debtor in possession may not use "cash collateral" without the consent of the secured party or authorization by the court, which must first examine whether the interest of the secured party is adequately protected. Section defines "cash collateral" as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, whenever acquired, in which the estate and an entity other than the estate have an interest.

### 9: Landlords and Tenants in Bankruptcy explained by Casper Atty | Law Offices of Patrick M. Hunter

*The recent Spanish Peaks decision from the Ninth Circuit (covering Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) deepens the split in case law on the ability to strip off leases in a landlord/borrower bankruptcy.*

Commercial Leases and Chapter 11 Reorganization: What a lessee can and cannot do with a problematic commercial lease is something that should be fully considered before a Chapter 11 bankruptcy is filed. It is essential to have careful course of action regarding a commercial lease since timelines are short and monetary obligations come quickly once the Chapter 11 is filed. This article intends to give a comprehensive yet general enumeration of the timelines and lease options under the Bankruptcy Code that a debtor-lessee i. Leases of personal property have different timelines and requirements than leases of real property. Simply stated, a terminated or expired lease cannot be assumed in the Chapter 11 proceeding except by voluntary agreement with the landlord. Bankruptcy also will not restore the rights of an already evicted tenant. A pending eviction proceeding does not necessarily imply that the lessor has also terminated the lease or that the lease has already expired and a tenant in midst of an eviction proceeding may nonetheless still have a lease that may be cured and assumed in Chapter For more information on eviction and Chapter 11, see Chapter 11 Bankruptcy: Can it Stop Eviction under a Commercial Lease? Typically this means that as soon as a Chapter 11 is commenced, the next payment of rent is still due and owing on the regular rent due date under the terms of the lease. For this reason, a Chapter 11 business debtor should be confident in its ability to pay all normal rent going forward as well as anticipate the timely performance of all other obligations under the lease including any tax payments that may be due after filing Chapter 11 as well as most non-monetary lease obligations. The Chapter 11 Debtor-Lessee has Days to Assume the Commercial Lease The Bankruptcy Code specifies that a non-residential real property lease must be either assumed or rejected within days of the Chapter 11 case being filed, with one extension of this deadline available for good cause. Lease assumption is essentially a reaffirmation of all terms of the commercial lease along with whatever changed terms may be negotiated between the parties. Lease assumption requires that the debtor-lessee cure monetary and non-monetary defaults under the lease and provide adequate assurance of future performance. Adequate assurance may take the form a replacement deposit particularly if the former lease deposit has already been set-off by the lessor prior to filing Chapter If a commercial lease is not assumed within days, the lease is deemed rejected under the law and the debtor-lessee must immediately vacate and surrender the property to the lessor. If a lease is rejected, the lessor may also be entitled to rejection and termination damages as claims that can be reorganized. Rental Arrears and Other Defaults must be Cured in Full for the Lease to be Assumed In addition to the timely payment of post-petition rent, if there has been a default under the lease, that default must be cured at the time the lease is assumed, i. Note that the act of filing of bankruptcy itself is not an event of default under the law that must be cured even if the lease says otherwise. Additionally if the debtor wishes to keep operating the premises under the lease, they also must cure all pre-petition defaults including rental arrears within a short period after filing bankruptcy or otherwise plan to vacate the premises within this same short period of time. While commercial leases are often are renegotiated in the course of a Chapter 11 proceeding with a cooperative landlord, sometimes the most that a debtor-lessee can expect is for Chapter 11 to provide a relatively short window of opportunity to either make good on a defaulted lease or move into another suitable property without the immediate threat of eviction.

Star spangled banner full lyrics 76. Hip Mama, by Ariel Gore Valle-Inclan; centennial studies Declarative invitation with supporting warrant (4:15/16) Baby Boomers Can My Eighties Be Like My Fifties? (Springer Series on Life Styles and Issues in Aging) The night of gems; the Affaire of the Queens necklace. The Special Collection UltraThin Classic Bible (NKJV)-Burgundy (Holman UltraThin Classic Bibles) Life and death of Jason. Crafts in a flash! Dusan bogdanovic mysterious habitats Weak Interactions and Neutrinos, WIN99 Moving beyond atheism : my own journey Dimitrios Liarokapis and Ali Shahrabi The northern area, Adelaide Nowhere but here renee carlino Millennium challenges. Distribution of seeds, bulbs, etc. Psychology gets in the game Struggles over labor and livelihoods Timely and Timeless A deathly hallow spread in blood How to become an instrument engineer Romantics, Rebels and Reactionaries Kayla itsines 28 day healthy eating Knowledge to action trading The quest for national identity : the Russian geographical society The Fullness of God Imaging inflammation in Parkinsonian syndromes David J. Brooks Economic geology of the Copper Mountain supracrustal belt, Owl Creek Mountains, Fremont County, Wyoming Dance of darkness Educational and organizational leadership in elementary schools Reel 506. Cook (part). Power animal retrieval Tamilnadu police exam model question paper with answers Voyage of discovery to Terra Australis by Willem de Vlamingh in 1696-97 Speeches, Articles, Interviews Rebel With a Cause Finally Comfortable being Graham Learning Sight Words is Easy! (Grades K-2) Review of impoundment message