

# Landlord and Tenant Law: Commercial Tenant Bankruptcy Considerations



Teleconference • September 16, 2010 • 1:00 PM – 2:30 PM EST

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Presented by:

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Foley & Lardner LLP  
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Foley & Lardner LLP

### Joanne Lee

- Attorney with Foley & Lardner LLP in the Bankruptcy and Business Reorganizations and General Commercial Litigation Practices
- Practice consists of a wide range of litigation matters in multiple areas, including bankruptcy, corporate compliance and securities
- J.D. degree, University of Chicago
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### Jill L. Nicholson

- Partner with Foley & Lardner LLP, and a member of the Bankruptcy and Business Reorganizations and Real Estate Practices
- Chairs the Distressed Real Estate Initiative and heads the Bankruptcy and Business Reorganizations Subprime Lender Task Force as well as the Homebuilder/Developer Task Force
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In today's uncertain economic climate, commercial tenants may find themselves with diminishing cash flows and limited resources to satisfy their obligations to their landlords, leaving both grappling with tough decisions, including whether to renegotiate the existing lease, terminate the lease or exercise other remedies upon default. This teleconference will explore the rights, remedies and strategies of landlords and tenants when presented with such a challenging situation and address how landlords can endeavor to maximize their recoveries while tenants may limit their exposure. Specifically, you'll get a step-by-step approach of the bankruptcy process as it impacts commercial leases, including the termination of leases; the assumption, assignment and rejection of such leases in bankruptcy; and enforcing contractually bargained for rights under such leases.

## AGENDA

### Pre-Petition vs. Post-Petition Considerations

- Lease Termination
  - The Automatic Stay
  - Ipso Facto Clauses
- Nature of Damages
  - Pre-Petition Unsecured Claims
  - Post-Petition Administrative Expense Claims

### Tenant's Obligations During Gap Period

#### Assumption of Commercial Leases

- Time Line for Decisions Regarding Assumption
- Cure and Adequate Assurance of Prompt Cure
- Compensation of Actual Pecuniary Loss to Third Parties
- Adequate Assurance of Future Performance
- De Facto Assumption

#### Assignment of Commercial Leases

- Section 363 Sale Issues
- Designation Rights

#### Rejection of Commercial Leases

- Effect of Rejection
- Calculating Rejection Damages Claims

#### Avoidance Action Issues

- Preferences
- Fraudulent Conveyances

**“The ability to learn faster than your competitors may be the only sustainable competitive advantage.”**

— Arie de Geus



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