

What Commercial Landlords Need to Know: 2021 COVID Relief Bankruptcy Changes

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While the headlines focused on the additional stimulus checks being sent out again to many Americans, the same law made some temporary tweaks to the bankruptcy code, three in particular that will affect commercial landlords dealing with tenant bankruptcies.

1. First, the bill provided a temporary extension to the tenant's time to decide whether to keep or reject a lease. Prior to these amendments, a tenant had 120 days after the bankruptcy was filed to make that decision, which the court could extend for another 90 days (210 days in total). This time frame was extended by adding another 90 days to the initial period, meaning that the tenant will get 210 days automatically, with the possibility of another 90 days granted by the court, for a total of 300 days. While this tweak gives tenants additional time to negotiate their leases, it also potentially leaves landlords in limbo for up to ten months while their tenants decide to keep or reject their lease.
2. Second, tenants must ordinarily commence paying rent for the post-bankruptcy period immediately after filing their case, but with the possibility of a single, court-approved, 60-day extension. With the recent amendments, however, small business debtors who have been adversely affected by COVID-19 can get a second 60-day extension, meaning landlords may have to wait 120 days to start receiving post-petition rent payments.
3. Finally, to encourage lease workout negotiations prior to bankruptcy, the amendments added protections for landlords receiving rent payments under rent deferral agreements, exempting those rent payments received within the 90 days prior to the bankruptcy filing from being clawed back as preferences.

All three of these changes will sunset on December 27, 2022, after which the applicable provisions will revert to their prior form for cases filed after that date.

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