

2017 Bernard O. Dow Leasing Institute:

***Addressing Lease Defaults
in Bankruptcy***

Presentation by:

*Hon. Marvin Isgur, U.S. Bankruptcy Court, Southern District of
Texas, Houston, TX*

Karl Daniel Burrer, Greenberg Traurig, LLP, Houston, TX

Full Stop: The Automatic Stay

- The Automatic Stay prevents all creditors from attempting to assess, collect, or recover from a Debtor any debt that arose before the filing of the bankruptcy.
- No self-help or judicial action outside of the Bankruptcy Court to attempt to recover past due rent.
 - No setting-off a security deposit against amounts due
 - No eviction attempts (even if the tenant is in default)
 - Don't try to terminate lease

Automatic Stay and Expired Leases

- When the term of a lease has expired, the Automatic Stay does not apply to prevent the landlord from regaining *possession of the premises*
- The Automatic Stay continues to apply to other remedies, such as possession and control of the Debtor's personal property on the leased premises

Ipso Facto Clauses: Will Lease Provisions Designed to Protect a Landlord in the Event of a Tenant Bankruptcy Hold?

- Bankruptcy Code section 365(e) invalidates *ipso facto* clauses—*i.e.*, any clauses that purport to terminate or modify a contract or lease, or any right or obligation under such contract or lease as a result of a Debtor's insolvency or financial condition, the commencement of a bankruptcy case, or the appointment of a receiver or a custodian in a bankruptcy case.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Addressing Lease Defaults in Bankruptcy

Also available as part of the eCourse

[2017 Bernard O. Dow Leasing Institute eConference](#)

First appeared as part of the conference materials for the
2017 Bernard O. Dow Leasing Institute session

"Addressing Lease Defaults in Bankruptcy"