2017 Bernard O. Dow Leasing Institute:

Addressing Lease Defaults in Bankruptcy

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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.

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