

UTILIZING LETTERS OF CREDIT AS SECURITY IN LEASE TRANSACTIONS

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Traditional Lease Security

▶ Cash Deposits

- *Sufficient
Liquid
Capital?*
- *Easily
Accessible*

▶ Guaranties

- *Creditworthy
Affiliate?*
- *Lengthy
Collection
Process*

THREE PARTY INSTRUMENT

- Bank/Issuer
- Tenant/Applicant
- Landlord/Beneficiary

- Tenant Applies for a Letter of Credit
 - *Some Form of Security*
- A Bank Issues for the Benefit of the Landlord
- Landlord Holds the Letter of Credit until Default or Other Draw Event Occurs

Common Varieties

Documentary

- Classic Form
- Used in Shipping
- Provides Secure Payment Upon Presentation
- Intended to be Drawn Upon

Standby

- Security for Performance of Obligations
- Intended to Standby in the Event it is Necessary to be Drawn Upon

Irrevocable & Independent Obligation

- Presentation by Beneficiary Prior to Expiration Date
 - Primary & Independent of Tenant's Obligation to Repay
- **ADVANTAGE OVER CASH IN BANKRUPTCY:**
NOT A PART OF THE DEBTOR'S ESTATE



AUTOMATIC STAY

- Bars Any Action
- Including Issuing Required Notices
- Must Petition Court for Relief
- Applies to Cash Security Deposits

CAP ON DAMAGES

- 11 U.S.C.A. § 502
- Mixed Case Law
- Issue Does Not Generally Arise if Security Deposit is LESS Than One Year's Rent

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Title search: Utilizing Letters of Credit as Security for Lease Transactions

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