

# **ANATOMY OF A LEASE**

## **PART IV**

### **LEASE TERMINATION**

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1. Defaults and Remedies
2. Tenant Bankruptcies
3. Legislative Update

Leases may terminate under a variety of circumstances. They may be voluntary such as when anchors go dark, or when gross sales do not exceed a threshold; or involuntary such as when casualty or governmental taking results in a full or partial termination, or one party defaults under the lease. Finally, bankruptcy by either the tenant or the landlord can result in a lease termination.

Anatomy of a Lease Part III addressed many of the issues concerning voluntary termination of leases. In this session, the focus will be in the areas of

- 1) negotiated lease terminations;
- 2) Defaults and Remedies; and
- 3) Bankruptcy.

With regard to Bankruptcy we will also be discussing specific legislative proposals which the International Council of Shopping Centers is lobbying in favor of so as to streamline the bankruptcy process.

## **I. NEGOTIATED LEASE TERMINATIONS**

### **A. TERMINATION AGREEMENTS**

1. Price of Termination
  - a. Lump Sum Amount
  - b. Payout Schedule
2. Timing of Termination
  - a. Vacation of Premises
  - b. Termination Date of Lease

3. Rental Provisions
  - a. Continuation of Rental Terms
  - b. Modification of Rental Terms to Termination Date
4. Use and Occupancy Provisions
  - a. Continuation of Operating Covenants
  - b. Suspension or Modification of Operating Covenants
  - c. Continuation of Restrictive Covenants
5. Mutual Releases of Liability
6. Survival of Indemnification Provisions
7. Form of Termination Agreement

**B. OPTIONS TO TERMINATE**

1. Term of Option and Notice Timing
2. Rental Provisions during Option Period
3. Use and Occupancy Provisions during Option Period
4. Documentation re Exercise of Option
5. Surrender and Vacation Provisions
6. Mutual Releases of Liability
7. Survival of Indemnification Provisions

8. Form of Option to Terminate

## **II. TENANT DEFAULTS AND LANDLORD REMEDIES**

### **A. DETERMINE TYPE OF BREACH**

1. Monetary
2. Non-Monetary
3. Abandonment (Real and/or Personal Property)
4. Surrender

### **B. CHECK LEASE PROVISIONS**

1. Notice Required
2. Opportunity to Cure
3. Curable
4. Security Deposit/Letter of Credit/Guarantor
5. Term/Month to Month/Holdover

### **C. DETERMINE TYPE OF ACTION**

1. Action for Damages
2. Action for Eviction

### **D. TENANT REMEDIES/DEFENSES**

1. Various Claims Against Landlord (roll out the "usual suspects",

i.e. Misrepresentation/Mismanagement/Mismarketing/Waiver-Estoppel,  
etc.)

2. Cross Claim
3. Tenant's Own Suit/Class Action
4. Bankruptcy

## **E. SETTLEMENT/RELEASE**

1. Voluntary Resolution/Termination
2. Sample Agreements