

# OUR PRACTICE

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## Commercial and Retail Insolvency

**A bankruptcy filing by an office or retail tenant presents a number of challenges for the landlord. Baker Donelson has substantial experience navigating this process and regularly protects the landlord's interests when a tenant files for bankruptcy protection. Prompt and effective actions in the bankruptcy court can minimize risk, and our teams of bankruptcy, commercial restructuring and real estate attorneys have assisted landlords in handling all aspects of these fast-moving cases, including:**

- Pre-bankruptcy enforcement of lease provisions in a defaulted lease.
- Protecting a lessor's interests in connection with proposed terms of going-out-of business sales.
- Obtaining post-bankruptcy filing rent, including pro rata "stub" rent for the month of the bankruptcy filing.
- Negotiating amendments to existing leases.
- Responding to a lessee's efforts to assign a lease notwithstanding provisions in the lease prohibiting its assignment.
- Negotiating and documenting the terms of the assignment of leases to a new tenant, including obtaining additional security.
- Addressing issues related to a lessee's rejection of a lease, including surrender of premises, assertion of claim for breach of lease, and re-letting space to new tenant.
- Operational issues that may arise during bankruptcy proceedings.
- Obtaining the return of a security deposit or draw on letter of credit.
- Asserting claims for payment defaults that preceded bankruptcy filing and for damages arising out of rejection of lease during bankruptcy.
- Leasing space to new tenants following the surrender of space during bankruptcy proceedings.

Our attorneys have protected the rights of commercial and retail landlords in bankruptcy proceedings in courts across the country. We have assisted retail landlords in bankruptcy matters involving leases in retail locations ranging from big box retailers, shopping malls, pad sites, food courts, street-level retail in mixed-use properties and flagship stores in historic urban locations. We have also represented office landlords for locations ranging from portions of a single floor to leases exceeding 100,000 square feet for the headquarters of a multinational corporation.

In every case, we recognize that our clients' primary objectives are usually to collect rent when the tenant remains on the premises, and to recover possession of the space when the tenant is no longer paying rent. We have an established track record of achieving these objectives in a cost-effective manner.

Some representative bankruptcy cases include:

- Radio Shack – Delaware
- Circuit City – Virginia
- Filene's Basement – Delaware
- Winn Dixie – Florida
- Service Merchandise – Tennessee
- Hollywood Video/Movie Gallery – Virginia
- Coldwater Creek – Delaware
- Grubb & Ellis – New York

- Regal Cinemas – Tennessee
- Footaction – New York
- Ritz Camera – Delaware
- State Stores – Texas
- Calumet Photographic – Illinois
- Olsson's Books and Records – Maryland
- Corinthian Colleges – Delaware
- Cosi – Massachusetts
- ITT Educational Services – Indiana
- Golfsmith – Delaware



## Representative Matters

- Represented national office developer in connection with headquarters lease in chapter 11 proceedings of multinational telecommunications company in United States Bankruptcy Court for the Southern District of New York.
- Represented dozens of large regional and national landlords in Chapter 11 cases, including the representation of more than 50 landlords in one large publicly traded retail business in bankruptcy and subsequent representation of more than 50 defendants in avoidance and claim litigation.
- Coordinated foreclosures involving complex commercial properties.
- Represented commercial landlord, seller of business and related creditors in bankruptcy of multi-state commercial stone yards, including defense and negotiation of settlement of two preference actions and one subordination action, negotiation of approved claims for creditors and protection of landlord's interest in commercial properties.
- Represented commercial property owners in connection with bankruptcy filings by general contractors.
- Represented the lead lender in the foreclosure of a \$57 million participation loan on a condo-hotel located in Orlando, Florida. The foreclosure was the result of a settlement involving the inclusion of additional adjacent property, which allowed the lenders to quickly re-sell the property after foreclosure. The negotiations also involved the hotel maintaining its flag.
- Represented nearly 60 commercial landlords in bankruptcy of national jewelry and home goods retailer Service Merchandise Company, Inc.; subsequent representation of more than 50 defendants in avoidance and claim litigation.
- Counsel, first for the Resolution Trust Corporation as Conservator/Receiver of a financial institution, and then for the debtors in the seven *Landmark Land Company of Carolina, Inc. et al.*, bankruptcies and related litigation (South Carolina); these consolidated Chapter 11 cases involved in excess of \$1.3 billion in claims and real estate assets, including nine golf/resort facilities in the United States.
- Represented financial institution as secured creditor at court-supervised auction and in resolving competing claims to proceeds of sale of assets of chain of regional markets.
- Represented landlord for flagship store in chapter 11 reorganization of national retailer in Delaware.
- Representing retail landlord in bankruptcy proceedings of national electronics retailer in the United States Bankruptcy Court for the Northern District of Illinois.
- Represented a secured lender challenging a cramdown plan of reorganization in Chapter 11 commercial real estate case.