

# Staying Ahead

with Saul Ewing

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## Commercial Real Estate Bankruptcy Alert

### New Bankruptcy Law Favors Commercial Landlords: How The Law Impacts You

On April 20, 2005, the United States Congress enacted “The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,” which generally will become effective on October 17, 2005 and will only apply to cases filed on or after that date. Joyce Kuhns, a Bankruptcy Partner at the Firm, has been an active member of the Bankruptcy Task Force of the International Council of Shopping Centers for the past eight years and testified before Congress on behalf of ICSC in support of the real estate provisions of the Act. The new law is the product of years of negotiation and represents three big wins for commercial landlords.

- 1. No more captive commercial real estate:** The new law imposes a firm outside deadline of **210** days after the bankruptcy filing for debtor tenants to decide whether to assume or reject their leases. The bankruptcy court no longer has discretion to extend the debtor’s time to decide how to dispose of its leases for many months and even years. The 210-day deadline can only be extended with a landlord’s consent.
- 2. No more shopping center lease sales that ignore use clauses:** The new law reaffirms that use clauses and other provisions of shopping center leases are strictly enforceable and must be honored by the buyer of a shopping center lease out of bankruptcy. Now a retail debtor with a shopping center lease restricting use to sale of children’s books, for example, cannot sell the lease in bankruptcy to an adult bookstore operator. However, name plate restrictions and provisions that expressly prohibit assignment remain unenforceable in a bankruptcy shopping center lease sale.
- 3. No more shutting down business operations without compensation if prohibited by the lease:** If a commercial lease requires continuous operations and a debtor tenant goes dark, the new law requires that in order for the lease to be assumed or assigned, operations must be resumed and the landlord can recover money damages for the losses it sustained due to the shut down. Previously, the law was unclear whether this type of default was required to be cured before a commercial lease could be assumed or assigned.

For more information on the new bankruptcy law and how it impacts you and your business, please contact Joyce A. Kuhns, a Partner in Saul Ewing’s Bankruptcy Department in its Baltimore office, or Jack Pierce, Chair of Saul Ewing’s Real Estate Department, resident in the Philadelphia office. Joyce can be reached at 410.332.8965 or [jkuhns@saul.com](mailto:jkuhns@saul.com). Jack can be reached at 215.972.8406 or [jpierce@saul.com](mailto:jpierce@saul.com). This bulletin is intended for informational purposes only, and should not be considered legal advice.

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