

How Can I Get Out of an Apartment Lease When I File Bankruptcy?

How will filing bankruptcy affect your rental lease? Get a bankruptcy attorney's advice on how this situation may play out...

Feb. 23, 2010 - [PRLog](#) -- My office colleague is in the process of filing a Chapter 7 bankruptcy for a young woman. Our client currently lives in a rented apartment, and her lease runs through July of this year. Our client would like to find a cheaper place to live, however, she is concerned that she may not be eligible to sign a new lease after filing for bankruptcy. Our client asked for our advice about what to do.

First, we advised our client that her bankruptcy filing would not prevent her from finding a new apartment later this year and signing a lease. However, the months immediately following a bankruptcy are a time when a debtor's credit is most damaged – it is very possible that our client would have a difficult time finding a landlord who would lease her an apartment right after the bankruptcy.

A better option in cases like this would be for our client to sign a new lease prior to filing bankruptcy and reject the current lease in the bankruptcy filing.

Under the bankruptcy law a lease is considered an "executory contract," meaning that our client still has on-going obligations to perform under the contract. In this case, our client has the contractual obligation to pay her lease. Other examples of executory contracts are vehicle leases, health club memberships and cell phone contracts.

The bankruptcy law allows a debtor to "reject" or "assume" an executory contract. If the contract is assumed, the debtor remains obligated under the terms of the contract. If the contract is rejected, the debtor's obligations are terminated.

In our client's case if she rejects her old apartment lease, the law deems the lease contract as breached as of the day before the bankruptcy filing. The landlord is entitled to repossess the apartment in accordance with state law. Any damages that the landlord might suffer are treated as pre-petition general unsecured claims. Per the Bankruptcy Code, the rejection damages that the landlord is entitled to are limited to either 15 percent of the balance of the rent that is left in the lease or the rent due for one year from the filing date or the date the apartment was surrendered, whichever is earlier. Fortunately the debtor can include any outstanding rent in her petition and wipe out the debt along with other unsecured debt.

This client took our advice and has already signed a new lease on an apartment and she will be rejecting her current lease in the Chapter 7, including all future rent and penalties incurred for not fulfilling the lease's terms.

For more information visit <http://www.bankruptcy-alternative.com/bankruptcy-and-credi...> or call us directly.

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