

# Creditors' Rights Law Alert: Executory Contracts and Leases

Among the powers provided to a Trustee or Debtor-in-Possession is the right under Section 365 of the Bankruptcy Code to assume or reject executory contracts or leases. Executory contracts, like unexpired leases, are contracts under which both parties have future performance obligations. With limited exceptions, a Trustee or Debtor-in-Possession who chooses to assume a contract or lease must cure any default (usually failure to make payment or perform an obligation) or provide adequate assurance the default will be cured. If the Trustee or Debtor-in-Possession rejects the contract or lease, it is treated as a pre-petition breach and any damages are treated as an unsecured claim. Generally, a Chapter 7 Trustee has 60 days to elect to assume a contract or lease or it will be deemed rejected. In most instances Chapter 11 reorganization cases do not impose a deadline for assuming or rejecting a contract or lease, but a non-debtor party may ask the Court to impose a time limitation.

Obviously, whether it will be more advantageous to you for an executory contract or unexpired lease in which you are involved with a Bankruptcy Debtor to be assumed or rejected will depend on the particular circumstances. Generally, it is to your advantage to have the contract/lease assumed, as the Trustee or Debtor-in-Possession is required to cure all defaults or provide adequate assurance that they will be cured. Any post-petition default should be treated as an administrative claim, which take priority over pre-petition unsecured claims.

There are many exceptions and permutations that will apply to individual cases. For that reason, we encourage you to contact one of the lawyers in our Creditors' Rights Practice Group to help you evaluate and navigate the particular circumstances of your case.

*Please visit our [Bankruptcy & Creditors' Rights Practice Area](#) to learn more about the legal services we can provide in this area. If you have any questions or would like more information on the issues discussed in this communication, please contact any of our Bankruptcy & Creditors' Rights attorneys.*