



WeWork's Landlords: Choosing the Best of Bad Options

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The threat of bankruptcy leave property owners with a set of tough options.

Ever since [WeWork mentioned the potential of bankruptcy](#) and CEO David Tolley's desire to "renegotiate nearly all our leases," landlords have likely been sweating and for good reason, according to lawyers who have spoken with GlobeSt.com. The options range from unappetizing to bad.

The mention of bankruptcy "is one of the primary debtor tenant negotiating tactics," says John Sparacino, a principal with McKool Smith's Bankruptcy Litigation practice area. "You're going to get really screwed if I file bankruptcy. Do you want to work out something a little better for you or do you want to wait for bankruptcy? And landlords, unless someone puts down a big security deposit or there's a significant personal guarantee behind the lease, are really exposed."

"Bankruptcy affords the ability to cancel leases and cap the rejection damages the landlords can get," Sparacino continues. "If there are many years left on a lease, the debtor can reject the lease "and damages are basically capped at one-year's rent."

"That's a powerful hammer in WeWork's hands," he adds. "Hence, that's what they go out to their landlords to negotiate."

Suing WeWork is also a problematic and complex action for a landlord to take. DivcoWest filed suit in September against WeWork for \$30 million after the latter abandoned its 311 W. 43rd St. location, as [CoStar reported](#).

Such suits typically get tossed in a bankruptcy, but this may be a further part of negotiation tactics. "There's a possibility they filed that lawsuit to get them back to the table," says Boies Schiller partner Jenny Kim. Divco might be hoping to negotiate a settlement that will give them something in hand without having a lengthy bankruptcy process. "That might be one of their plays, but it's a risk that every landlord will have to take with WeWork."

Also, some agreement up front might free any contention over the ability to subsequently lease. "Sometimes the real estate can get caught up in a bankruptcy filing and it slows your ability to get your next tenant," says Sparacino.

Bankruptcy could also be a big gamble for WeWork.

"Bankruptcy is long and it's hard and it's expensive and a company that is as weak financially as WeWork would have a difficult time processing itself through a bankruptcy," says Boies Schiller partner Michael Fay. "They have just over \$205 million in cash as of June 30 of this year and in the first quarter they burned through about \$300 million. They're in a very troubling situation." If real estate is typically about location, for WeWork, at the moment it's more likely to be who blinks first.