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## 32 Signs That the Building Your Company Leases May Be In Serious Financial Trouble

*and, 9 Defensive Strategies to Protect Your Company*

As your company seeks to reduce costs and preserve its cash, it is important to keep a careful eye on those other companies that provide services to you that can have a material affect on your ability to conduct business productively, safely, and profitably. Specifically, your company's landlord could be experiencing financial or other challenges that, if unresolved appropriately, could hinder your ability to enjoy a productive business environment, irrespective of your continued rental payments.

Watch for a number of issues that could signal your landlord is having difficulties, or may be headed for them. They could be signs that your landlord may be in danger of losing its building. While this list is not intended to be complete, some indicators may include:

1. Significant increases in vacancy in your building
2. Increases in vacancy in other buildings where landlord has an ownership interest
3. Increases in vacancy in neighboring competitive buildings
4. Construction projects that start but, languish unfinished for extended time periods (typically a sign that contractors are not being paid on time or at all)
5. Decline in response time and / or communications for service, maintenance, or repairs (a sign that staff has been cut or is stretched too thin)
6. Increase in equipment and system breakdowns, such as elevators, HVAC systems, etc (indicates a decline in preventative maintenance, staff cuts, or more)
7. Fewer landlord or management company employees visible on site
8. Decline in security, life and property safety services
9. Consistent lack of consumable items in restrooms and other areas
10. Interior office, common area, or window cleaning occurs less often
11. Trash not disposed of in a timely manner or is stored in basements and other areas
12. Snow not removed from parking lots in a timely manner
13. Landscaping not updated or maintained. Grass is cut less often
14. General deterioration of the appearance of the building and grounds

15. Reduction of tenant events
16. Deferred capital improvements and preventative maintenance - announced or planned but, not implemented
17. Floors, glass, and metal and other interior components not polished or maintained
18. Band-aid repairs being made in place of needed capital replacements
19. Unresolved mechanics liens from contractors and other service providers
20. Real estate taxes delayed or not paid
21. Mortgage payments delayed or not paid
22. Delayed or unpaid water, utility, or other bills
23. Increase in unresolved or unpaid fines from the municipality and / or other governmental authorities
24. Substantial and / or unexplained increases in operating expenses and the cost of landlord or management company provided services passed on to tenants
25. Landlord making multiple requests for you to sign estoppel certificates or lease summaries (suggests that the landlord may be scrambling for financing or attempting to sell the building)
26. Real Estate brokers unwilling to show your building to prospective tenants (suggests that landlord is unable or unwilling to pay commissions - typically a sign of a cash crunch)
27. Contractors seeking payment from you instead of landlord (indicates a lack of confidence on the part of contractors in their ability to be paid on time, in full, or at all)
28. Contractors unwilling to work in your building (see above)
29. Multiple switching of leasing and / or managing agents, building managers, cleaning companies, security services, vendors, service providers
30. Landlord selling other assets
31. Landlord's inability to sell or refinance your building
32. Change in landlord's leasing program - agreeing to many short term leases to small, transient, and / or undesirable companies

What can you do to protect your company and assure that your environment remains productive, safe, and profitable, and that you receive the services to which you're entitled?



Imagine planning and executing a well designed defensive operational and financial strategy, only to find out that the real estate your company leases may not be under your control and that the space may be pulled out from under you! That's right! Your landlord may not be as good at pruning expenses and could lose your building, throwing your company's rights to remain in its space into question.

"But, we have a lease with many years remaining; we pay rent and have never been late! They can't take our space away from us....can they?"

The answer to that question is a resounding...."That depends!" It depends on a number of factors, from whether or not your landlord will really lose its building, to who will end up with it, to what the process will be if the landlord does lose the building, to how thorough your company's lease was negotiated in the first place and what protections that document affords you.

The first step is to read your company's lease. Check all of the clauses that might impact your occupancy, including those pertaining to Non-Disturbance, landlord default, self-help, sublease, early termination, and others. Since your lease constitutes the rules of engagement, be certain to understand your company's rights, privileges, and obligations, in the event of a serious landlord problem.

Make it your business to understand all lease components that could affect your company's ability to remain in the building if the landlord were unable to support it financially. Specifically, does your lease provide for self-help (the ability to secure services that the landlord fails to provide) in the event that the landlord defaults in providing services to you? Can you contract for temporary cleaning and other services? Can you secure utilities directly from the utility provider? Can you do the above without putting your company into default of its lease?

What if the landlord actually goes bankrupt and ownership of the building reverts to the lender? Can the lender terminate your lease? Maybe! Does your lease require the landlord to secure a non-disturbance agreement for you from the lender? A non-disturbance agreement, if written properly, will prevent a successor, like a lender, from terminating your lease. "Why would a lender terminate our lease? Wouldn't they prefer to retain rent paying tenants?" That, too, depends! It is possible that your building could have a greater value or a greater likelihood of being sold if it were vacant. Perhaps a larger tenant, or one that for some reason is more desirable, may want your space. Or, maybe your company's use of its space is not conducive to the lender's future plans for the building. Without a non-disturbance agreement, your company could receive notice to vacate and have little choice.

When commercial landlords experience financial difficulties, the tell tale signs may be easy to spot. In many cases, payments to vendors, service providers, taxing authorities, and others become delayed or are sometimes not paid at all. In others, the building shows signs of neglect.

If you believe you have reason to be concerned, do a little detective work. Check with the local property tax dept, utility companies, and other building services providers to confirm that bills are being paid in-full and on-time. Ask around, too. Are vendors, commercial real estate brokers, contractors, and others being paid in-full and on-time? But, be careful here. You wouldn't want to spook anyone and create concern about your landlord if problems don't exist.

Take a look around your building and ask yourself some of these questions:

- Has building management or maintenance staff been cut?
- Is the landlord any less responsive?
- Are capital projects being delayed?
- Is construction languishing in an incomplete state for extended periods?
- Are repairs taking too long to complete?
- Does the building look as good as it did?
- Are the interior and exterior common areas being well maintained?
- Is the landscaping being maintained, trash being removed and parking areas being plowed of snow promptly?
- Are vacancies growing?
- Are smaller, less desirable, and / or transient tenants taking space?
- Has the landlord tried unsuccessfully to sell or refinance the building?

These are common indicators that a building and / or its landlord may be in financial trouble. So, what happens if you uncover bad news and find out that your landlord isn't just managing cash flow but, may truly be in danger of losing its building.....YOUR building?!

Here are **9 Defensive Strategies When Your Landlord May Lose The Building Your Company Leases**, that might stave off a catastrophe for your company:

1. Buy the building from the landlord (This one may be challenging if your company is a small tenant in a large building)
2. Buy the building's mortgage from the lender
3. Sublease your space (This strategy may be least effective if the building is experiencing financial hardship)
4. Restructure your lease (Can your company create enough of a financial benefit for itself and its landlord to save the building? What would be the quid pro quo?)
5. Seek self-help (Which services, on which the landlord may default, can your company perform or have performed by other service providers without placing itself into default of its lease?)
6. Check with your real estate professional (What's the word on the street?)
7. Check with your attorney (What legal remedies might your company have at its disposal?)
8. If your lease is scheduled to expire, move now....move early (The double rent that your company might pay for a short time period if it moves to other quarters before its lease expires may be cheap in comparison to the expenses, lost productivity, and other challenges it might experience if the landlord loses its building)
9. Have a conversation with your landlord to determine what you might work out together

So, how bad could it get? What could happen if your landlord DOES lose your building to its lender.....or, to the sheriff for non-payment of property taxes?



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Andrew Zezas is well-known for his energetic, motivational, and informative style of conference speaking, and has given informal talks, formal presentations, and has lead training, educational, and career enhancement programs for financial and management executives; business, professional, government, and trade associations; throughout the US and Canada, including the Financial Executives International (FEI), the Financial Executives Networking Group (FENG), the Institute for Management Accountants (IMA), American Management Association (AMA), the U.S. Postal Service, RealComm, Building Owners and Managers Association (BOMA), Society of Industrial and Office Realtors (SIOR), and others. Andrew is founder, former National Chairman, and currently Co-Chair of the SIOR Tenant Representation Specialty Practice Board, a group of over 300 tenant representation focused commercial real estate professionals from around the world. He is a licensed real estate broker in New Jersey, New York, Connecticut, Pennsylvania, and Florida, and is a licensed real estate instructor in Texas, Indiana, and other states. He can be reached at 908 245 5999 or via email.

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