

**Strafford**

*presents*

# **Commercial Lease Restructurings and Workouts**

## **Negotiation Strategies for Landlords and Tenants in Troubled Leases**

**A Live 90-Minute Teleconference/Webinar with Interactive Q&A**

**Today's panel features:**

Yolanda Rodriguez, Co-General Counsel, **O'Neill Properties Group**, King of Prussia, Pa

Richard R. Spore, III, Member, **Bass Berry & Sims**, Memphis, Tenn.

Gregory G. Gosfield, Partner, **Klehr Harrison**, Philadelphia

**Wednesday, September 22, 2010**

The conference begins at:

**1 pm Eastern**

**12 pm Central**

**11 am Mountain**

**10 am Pacific**

You can access the audio portion of the conference on the telephone or by using your computer's speakers.  
Please refer to the dial in/ log in instructions emailed to registrants.

	Subletting of Premises		Assignment of Lease	
	Pro	Con	Pro	Con
<b>DEAL ISSUES</b>				
<b>PRIVITY OF ESTATE</b>	Transferee has no duty to Prime Landlord	Transferee has no recognition from Prime Landlord, no rights as to: <ul style="list-style-type: none"> <li>• Quiet enjoyment</li> <li>• Wrongful eviction</li> <li>• Remedies of setoff</li> <li>• Possession upon landlord rejection of lease</li> </ul>	Landlord has direct duty to Transferee	Transferee has direct duty to Landlord
<b>PRIVITY OF CONTRACT</b>	Transferee has no direct duty to Prime Landlord	Transferee has no direct contract right: <ul style="list-style-type: none"> <li>• audit contests</li> <li>• policing of rent payments to Prime Landlord</li> </ul>	Transferee has direct contract right of audit, contest, invoice copies	Transferee has direct duty to Prime Landlord
<b>BUFFERS</b>	Sublandlord buffers Subtenant from Prime Landlord	Sublandlord relies on Subtenant to fulfill Prime Lease obligations	Transferor free from direct lease performance and its administrative chores	Transferor is distanced from ability to police lease performance while liable for failure of lease performance
<b>PRIME LANDLORD</b>	Buffers Prime Landlord from Subtenant (not underwritten by Prime Landlord)	Prime Landlord and Subtenant have no direct control over each other	Prime Landlord has Transferee as new responsible party, plus Transferor	Transferee may not be as attractive as original Transferor; Prime Landlord may have chosen someone else if allowed
<b>LIABILITY OF TRANSFEROR UPON DEFAULT BY TRANSFEE</b>	Transferor rights to mitigate loss by repossession, re-entry or acceleration	Transferor remains liable to prime landlord	Transferor paid in advance for value of site	Transferor remains liable for tenant obligation unless released, then novation  No structural reversionary rights for mitigation, repossession or re-entry may be deemed to be sublease
<b>PRIME LANDLORD RISK UPON TRANSFEROR BANKRUPTCY</b>		Bankruptcy of Transferor can divest/reject sublease	Bankruptcy of Transferor does not affect lease.	

	<b>Subletting of Premises</b>		<b>Assignment of Lease</b>	
	<b>Pro</b>	<b>Con</b>	<b>Pro</b>	<b>Con</b>
<b><u>DRAFTING ISSUES</u></b>				
<b>NOTICE AND CURE</b>	Notice and cure should be less than original lease		Transferor should have separate covenant by Transferee to limit notice and cure to less than original lease and allow Transferor final performance	
<b>REMEDIES</b>	Property right to accelerate, re-enter, and recover.	Transferor may have duty of mitigation of Transferee's damages	Notwithstanding Transferor has no reversionary interest. Contractually assert right to accelerate, re-enter, and recover	Could recharacterize assignment as a sublease
<b>RETAINED PROPERTY AT SURRENDER</b>	Distinguish Transferor's property from Transferee's		Distinguish Transferor's property from Transferee's or create total assignment and applicable consideration	
<b>INCLUDE OR EXCLUDE PRIME LEASE TERMS</b>	Consent, notice and cure, set off, termination, audit contest	Termination for destruction or loss of services may not easily import		No easy way to modify Transferor rights, no easy way to monitor against Transferee's default