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Tenant, lender lease agreements could see more demand in Okla.

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OKLAHOMA CITY – For years, tenants have had little to worry about as many shopping centers and office buildings had solvent owners. But if owners hit hard times or file for bankruptcy protection, the status of tenants can become uncertain, especially if a property reverts back to a lender.

In the current economic climate, Chris Griswold expects more tenants to follow the trend of national chains and establish a contract with their landlord's lender. The agreement would cover subordination, non-disturbance and attornment to protect the leaseholder in the event the landlord becomes insolvent.

Griswold, who worked as legal counsel for Pier 1 and JCPenney before starting his practice in Oklahoma in 2007, said the benefit for tenants with agreements is their business operations will not be affected by their landlord's financial problems. The lender will not disturb the tenant if an agreement is in place prior to the landlord's insolvency, in exchange for the tenant treating the lender as the new landlord.

Tenants could face losing everything they have invested in their space if their landlord's financial problems are mounting and they do not have an agreement in place.

"That's scary for a tenant that isn't having other problems," Griswold said.

Griswold said Oklahoma landlords and tenants so far have not been facing many of the woes seen in other parts of the country, and he has not yet seen a huge demand for tenants seeking agreements with their landlord's lender.

Brent Conway, with CB Richard Ellis Oklahoma, said the agreements are not a new thing, but there is a heightened awareness among tenants, especially for the non-disturbance clause.

"It's something tenants are starting to be brushed with more than in the past," Conway said.

Many well-established landlords often have the agreements written into contracts to benefit both parties in the event of financial troubles, Conway said.

While the future may be uncertain for tenants without an agreement with their landlord's lender, lenders often will keep existing tenants if they are paying rent and have a strong balance sheet.

"Technically if you foreclose you eliminate all leases," said Harrison Levy, president of Grubb & Ellis Levy Beffort. But "98 percent of the time if a lender does foreclose and someone is in there doing business and paying rent, they want them to stay."

Levy said there is no real downside to a tenant including lender agreements in a lease.

"They're doing it to protect themselves," he said.

Griswold said lenders will typically want to keep the income stream from existing tenants, but it is their prerogative to cut ties with tenants who do not have an agreement.

"If the lender doesn't care, and with no agreement in place, the tenant has no recourse," he said.

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