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What Every Young Lawyer Should Know About Non-Residential Tenant Bankruptcies

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AUTOMATIC STAY

What is it? The automatic stay is a legal fiction that springs into effect automatically upon the filing of a bankruptcy petition. It is broad in scope and stops almost all collection actions against a debtor or its property.

What is Stayed? Examples of actions that are prohibited include: (i) a demand that the tenant pay a debt which accrued before the commencement of the bankruptcy case; (ii) action to terminate the lease agreement; (iii) action to evict the tenant; and (iv) applying any security deposit held by the landlord.

What isn't Stayed? A lease agreement that expired or was terminated before the bankruptcy case commenced is outside the scope of the automatic stay. However, out of an abundance of caution, a landlord should consider seeking relief from the automatic stay before enforcing its rights under the lease.

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