



## **Critical Lease Issues Related To Tenant Financing**

- I. **Does the Tenant Have the Right to Pledge Tenant's Property to Secure Financing?**
- II. **Does the Landlord Have Superior Rights Over Tenant's Property?**
  - A. Contractual
  - B. Statutory
  - C. Does the Lease obligate Landlord to enter into a Subordination Agreement or Landlord's Waiver with Tenant's Lender?
- III. **Does the Lease Permit or Prohibit Tenant from Collaterally Assigning Tenant's Interest in the Lease to Tenant's Lender?**
  - A. What does this mean for the Tenant?
  - B. What does this mean for the Landlord?
  - C. What does this mean for the Tenant's Lender?
- IV. **What are the Critical Issues in a Landlord Waiver, Subordination Agreement or Consent to Collateral Assignment Agreement?**
  - A. What is a Waiver v. Subordination Agreement v. Collateral Assignment?
  - B. Definition of Collateral?
  - C. Restrictions on Access to Premises to Remove Property.
  - D. Liability for Rent and Damages.
  - E. Signage/Advertising/Public or Private Sales at the Premises.
  - F. Notice Requirements.

- G. Lender's Ability to Operate Tenant's Business in the Premises or to Assign the Lease to Another Operator (franchise context).

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