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UPDATE: Advice to Landlords Holding Letters of Credit Issued by Silicon Valley Bank, and Landlords Where Silicon Valley Bank is a Tenant

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What a week this has been since the closure of Silicon Valley Bank. As noted in our [Client Alert](#) of last week, California State regulators shut down Silicon Valley Bank (SVB) on Friday, March 10, 2023, and appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver for the bank. On Tuesday, March 13, 2023 (after we published the Client Alert), the FDIC created a "bridge bank" and transferred the bank deposits and bank operations of the failed SVB to the new bank that will be operated by the FDIC. This is important. While the FDIC has said the bridge bank will honor all bank deposits and banking operations of the failed SVB, that does not include leases where SVB is a tenant.

Compounding the exposure to landlords, the parent company of Silicon Valley Bank, SVB Financial Group ("SVB Financial"), filed for bankruptcy protection under chapter 11 of the United States Bankruptcy Code on Friday, March 17 2023. So the conversation has shifted. What do landlords do if they are a landlord to either SVB or SVB Financial? Importantly, the two situations are governed by different statutory schemes under the federal United States Code. FDIC receiverships (Title 12) apply to SVB, while bankruptcy is governed by a different set of rules (Title 11). Under both statutes, landlords are entitled to "administrative rent" – meaning the rent that is coming due now. When that rent will be paid is always a question, but it has priority in payment over all claims other than secured claims.

As to rent damages, the answer is different under each statute. The FDIC receivership statute provides for no "rejection" (or future) damages – if the FDIC sells the failed SVB's assets to another bank and that bank does not want to assume the lease, the FDIC can repudiate (or terminate) the lease if it determines that lease is "burdensome." The Bankruptcy Code does provide for rejection damages, but secured claims, administrative claims, and priority claims against SVB Financial will reduce the pool available to general unsecured creditors, like landlords. The only glimmer of some recovery is in the SVB Financial bankruptcy filing which notes SVB Financial's estimation that "funds will be available for distribution to unsecured creditors."

Also important, in the FDIC receivership landlords have no right to object - and often no prior notice - on an assignment of the lease, there is no concept of "adequate assurance of future performance," and monetary defaults under the lease need not be cured as a condition of assignment. In a bankruptcy, those rules apply.

The claims process is also different depending on which statute applies, most notably, there is generally no court review of the FDIC's adjudication of claims. Bankruptcy does provide for judicial review.

Buchalter attorneys are involved in representing landlords in these matters.

Please reach out to me and the contacts at the Firm noted below with if you have any questions.



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