

# SHOPPING CENTER BUSINESS™

## The Benefits of Negotiated Settlements as an Alternative to Chapter 11

**In today's retail climate, negotiated settlements can be an alternative to Chapter 11 for some retailers. Negotiated settlements can also be to the developer's benefit as well.**

— Ivan L. Friedman

As more and more retailers turn to negotiating with landlords as an efficient and effective way to respond to today's challenges, and as more landlords continue to recognize that negotiation frequently presents them with an opportunity to realize sometimes significant benefits from an otherwise difficult circumstance, this growing trend is now becoming a necessity.

How do negotiated settlements work? Who stands to benefit from them? And what is the nature of those benefits? A closer look at the process can answer these questions.

More than ever, retailers today require the kind of timely, accurate information that enables them to be agile, responsive, and engaged, and to make the kinds of sound, proactive decisions necessary to sustain—or regain—a strong financial footing. These factors become even more vital when retailers must determine how

best to address struggling locations, or when evolving circumstances seem to call for realignment or a change in the business model.

When a challenging situation develops into a more significant problem, filing for bankruptcy has traditionally been one way forward for struggling retailers. There are a host of problems associated with Chapter 11, however, that makes filing a risky and costly proposition. Among other concerns, a retailer who is unable to meet the tight procedural deadlines and fails to restructure, present a plan to the bank to resolve its financial difficulties, or line up a buyer within the first 90 days, may face liquidation. In a Chapter 11 filing, a large percentage of the estate's money inevitably is apportioned to the various constituencies involved in the bankruptcy, and, of course, equity holders, including the owner of the firm, are wiped out. In recent years, there has been a growing appreciation for the value



of negotiated settlements as an alternative to Chapter 11, and a more thorough understanding of the important role played by experienced retail consultants throughout the negotiation process.

For all companies, whether they are thriving or distressed, everything starts

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with an accurate, objective analysis. The need for objectivity, as well as the benefits of obtaining an outside perspective, makes an experienced retail real estate consultant a valuable ally and an invaluable source of counsel and perspective throughout the assessment and, ultimately, the negotiation process. An expert can work closely with the retailer to perform what is in essence a kind of retail triage, determining which locations are performing well, which need help, and which are beyond salvation. Even healthy companies are in a position to benefit from this kind of assessment, as an underperforming bottom 10 percent can quickly become 20 to 40 percent if economic circumstances change and the company experiences a downturn in sales. A timely analysis can predict future trends, providing enough of an advance warning so that a retailer can neutralize downward trending sales and prevent a paper cut from becoming a hemorrhage.

Once the analysis is completed, a retail

real estate consultant will approach a landlord directly on a tenant's behalf, and discuss the potential for a reduction in rent, or negotiate mutually acceptable terms to terminate the lease. This can be a persuasive case since a rent reduction can avoid a store closure, and a retailer is frequently in a position to offer the landlord a sum of money for a lease termination that is higher—sometimes significantly higher—than the landlord would otherwise receive if the company is forced to file for Chapter 11. A rent reduction often presents the attractive alternative of avoiding a store closing; a scenario that is generally more desirable than an empty space. Part of the landlord's decision to offer rent relief involves necessary consideration of the cost(s) to re-let that space. The requisite downtime, potential buildout costs or tenant allowance, as well as a likely broker's commission, often make securing another tenant a less-than-ideal proposition for landlords. In the financial

and logistical complexities of the retail equation, there are always factors at play that can influence the negotiating process and determine the ultimate outcome.

As the contours of the legislative landscape have shifted, and as the national economic outlook has become a bit rockier, negotiated settlements have begun to occupy an increasingly prominent place in the necessary give-and-take between retailers and landlords. For a retailer who is struggling to stay afloat, negotiated settlements offer a potential lifeline. What makes this trend seem certain to continue, however, is that those same negotiated solutions are proving to be an attractive and popular way forward for landlords as well. **SCB**

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