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

By: [Manuel Fishman](#)

While unexpected, the closure by California regulators of, and the appointment of the Federal Deposit Insurance Corporation (“FDIC”) as receiver for, Silicon Valley Bank (“SVB”) is an event that is contemplated by most leases. If you are holding a letter of credit issued by SVB, you are an unsecured creditor of the bank. The lease should allow you, as Landlord, to require your tenant to obtain a new letter of credit from a bank acceptable to the landlord. Landlords should contact their tenants and ask what the tenant is going to do – stay with the bank now that the Federal government has said it will make all SVB customers whole on the money the customers have on deposit with the bank, or move their accounts to a new bank. While that decision is a tenant decision, the lease requires the tenant to post a letter of credit from a creditworthy bank. Landlords should begin the process to require tenants to adhere to their lease covenant on providing a satisfactory letter of credit. Given the current leasing market, this is likely not a simple discussion.

Less clear is what landlords can do if there is a current lease default or event that entitles the landlord to immediately draw on the letter of credit. While there may ultimately be a buyer of the bank that acquires both its assets and liabilities, that provides little comfort over the next two or three weeks that a landlord submitting a draw demand under a properly issued letter of credit will be able to get its funds in a timely manner. Additionally, it is possible that the bank’s liabilities will not be acquired by a third party, in which case the FDIC could choose to repudiate any letter of credit. There is established authority classifying a letter of credit as a contract subject to repudiation by the FDIC, as receiver. There is simply no easy resolution of this situation.

This leads to the third situation – what can landlords, with Silicon Valley Bank as a tenant, do? Whether the bank pays rent on April 1, 2023 is unclear, but, in short order, the new “buyer” of SVB’s assets will be given the opportunity to acquire or reject the bank’s leases. Landlords will be an unsecured creditor – no different than it is for any other failed tenant. The likelihood of recovery of future rent damages will be uncertain.

Clients should review the [Joint Statement by Treasury, Federal Reserve and FDIC](#) issued Sunday, March 12, 2023 which provides, in part: “Shareholders and certain unsecured debtholders will not be protected.” That position was not further clarified in the statement, so we believe that it is prudent, for now, to consider that holders of SVB letters of credit should regard themselves as being in the category of “unsecured debtholders” and therefore not protected.

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



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