

INSOLVENCY – LANDLORD AND TENANT

The property crash has hit most of us in terms of the value of our properties, and more potential purchasers are now seeking to rent until the property and financial markets recover. However, we are now entering a period of a likely deep recession, so what happens if a landlord – or indeed a tenant – goes “bust”?

Landlord

1. **Administration** – The administrator will usually seek to sell the property as soon as possible. In the meantime the lease will continue if the administrator performs his duties under the lease, so nothing changes. However, if the administrator does not do so, and the tenant wishes to vacate, then the tenant should take legal advice upon whether the administrator has repudiated the lease, and whether it can, therefore, be terminated. If not, as an alternative, the tenant can approach the administrator to enquire if he would accept a surrender of the lease.
2. **Liquidation** – This is essentially the same as above, however the Liquidator has an additional right to disclaim a lease. The effect of such disclaimer, if nothing is done, is that the freehold title will vest in the Crown (i.e. it will become the landlord). Note, however, that the Crown will not inherit the landlord’s obligations under the lease. If the landlord is itself a lessee/lessor, the disclaimer will bring the lease to an end and that of any sub-tenant. Accordingly, in both cases, legal advice should be sought immediately.
3. **Other Points** – Whilst any lease is continuing, notwithstanding that the landlord may be in administration or liquidation, the tenant should continue to pay rent when due. If a superior or intermediate lessor has been placed into administration or liquidation, the superior landlord may give notice on any sub tenant requiring payment of rent directly to it.

Other points for the tenant to check are – (a) rent deposits (b) payments in advance and on account of service charges/sinking funds and (c) buildings insurance.

Tenant

1. **Administration** – Whilst in administration, the tenant may not pay rent. The landlord will have to apply to the Court to forfeit and/or collect arrears.
2. **Liquidation** – As above, but also see under “Landlord”.
3. **Points to Note** – (a) The landlord may have rights against a former tenant or guarantor under the Landlord and Tenant (Covenants) Act 1995, (b) if the premises are empty, the landlord may become liable for rates between 3-6 months after vacation and (c) distraint is in the process of being abolished.

If you would wish any further information regarding the points made above, and/or require advice in connection with such points, please contact either Tamsin Ali or Chris Millar on 01306 880110.