

With less than two weeks to go until the Commercial Rent Arrears Recovery (“CRAR”) rules come into force, today’s quarter day is a landlord’s last opportunity to review its tenants’ arrears and consider whether to exercise its right to distrain before it’s too late.

After 6 April 2014, the right to distrain will be abolished and in its place the recovery of commercial rent arrears by taking control of and selling a tenant’s goods will be governed by CRAR.

What’s Going to Change?

- Unlike distress, CRAR can only be used to recover rent, i.e. the amount payable for the possession and use of the premises (plus interest and VAT). It will not apply to arrears relating to service charge, insurance, rates or any other ancillary sums reserved as rent under the lease.
- The new rules will only apply to written tenancies of commercial premises. If the premises can be occupied, in whole or in part, as a dwelling CRAR will not apply (unless the occupation is in breach of the lease).
- CRAR can only be exercised if the “net unpaid rent” equals or exceeds an amount equal to seven days’ rent. In practice, this shouldn’t cause too many issues as most commercial rent is payable either quarterly or monthly in advance.
- Whereas previously a landlord could distrain without notice, CRAR requires a landlord to give a tenant at least seven clear days’ notice in writing of its intention to seize goods. Such notices must be served by the enforcement agent who will carry out the seizure, so landlords and their agents should start to consider sooner rather than later who their preferred enforcement agents will be, if required.
- Recovery of sub-rent is also due to change. Currently, if a head tenant falls into arrears the head landlord is entitled to require the sub-tenant to immediately pay any sub-rent which falls due to the head landlord direct (effectively cutting the head tenant out of the loop). Whilst this right is set to remain, the sub-tenant will only be liable to pay to the head landlord sub-rent that falls due 14 clear days after the head landlord has made its demand.

Hints and Tips

- Landlords should review their rental arrears as soon as possible and consider whether to exercise the right to distrain before 6 April, especially in respect of any service charge or insurance rent arrears.
- In respect of any properties which have been sublet, landlords should consider whether to contact the sub-tenants prior to 6 April to demand payment of the sub-rent, to avoid the lengthy notice period that will soon be required.
- In future commercial leases, landlords should consider whether to place strict limits on the permitted use, i.e. expressly excluding residential use, to prevent the lease falling outside the scope of CRAR.
- For mixed use properties, e.g. high street shops with a residential flat above, landlords should consider whether to grant two separate leases to avoid any limitations on the use of CRAR.

If you would like to know any more about the upcoming changes please contact either Anna Beaumont or David Holland.

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