

Changing times for landlords and tenants

We are all facing unprecedented changes, happening at a considerable rate and many landlords and tenants are making decisions about their businesses and premises with the collective aim of looking to long term business continuation. The March quarter day has been the trigger for many tenants to consider how they can continue to meet their obligations, when trade has dropped dramatically for many or they have been forced to close their premises in accordance with government guidance. The passing of the Coronavirus Act 2020, has introduced further changes.

If, as a landlord or tenant, you can be flexible, then this is the time to do so. We would encourage all of our clients to keep the lines of communication open and to work together, if at all possible. The aim of this note is to provide some practical advice on ways to manage the current situation.

Insurance – if you have not already considered this, check what insurance you may have in place that could be called upon to cover any losses that may be suffered over the coming months.

Rent – many of our clients are already receiving requests from tenants to pay rent on a monthly basis rather than the usual quarterly payments. Those landlords that can afford to be flexible are being pragmatic about the long term aim of keeping a good tenant and accepting the variation. If you are considering whether to accept the rental variations, it is advisable to put a time frame on that variation.

Rent deposits and guarantors – if the tenant is unable to pay the rent at the present time, consider if there is a rental deposit that could be drawn upon or if there is a guarantor under lease to call upon.

Knock on effects – what may seem like a straight forward variation to the lease, may have some unforeseen consequences. If you are a tenant, consider if there is a conditional break clause which is close to being activated, requiring all rents to be paid up to date at the time of service of the notice. Any variation to the rental payments may need to acknowledge the terms of the break clause to ensure it can be complied with.

If the lease is close to renewal, the terms will need to be agreed for the new lease, which could be impacted upon by a permanent change in the lease terms now.

If you are landlord with a mortgage, which is reliant on rental payments that may be varied, consider whether you need to speak to your bank to agree a payment holiday or to agree the variation, to ensure that you are not in breach of your own mortgage agreement.

Forfeiture and evictions on hold – restrictions are currently in place preventing forfeiture of commercial tenancies and evictions of residential tenancies for non-payment of rent for the periods defined by the Coronavirus Act 2020. As this is an ever changing situation, it is advisable to take advice if you are considering what options are available to you in the event that the tenant fails to pay the rent.

Post – a challenge for many companies is collecting post, when they have been forced to close or are required to work from home. A practical point is how to deal with post. From a legal perspective, one of the concerns is missing receipt of notices served pursuant to the terms of the lease. If you are required to serve a notice or may be anticipating receiving a notice, consider agreeing additional addresses or methods for service.

Plan ahead – whilst we live in a digital age, with the enforced requirement of many to work from home, the sensible approach is to allow for some extra time to ensure that deadlines are met and that the terms of the lease are complied with.

Put it in writing - in the rush to agree changes and in the spirit of co-operation, it is easy to forget to formally record the changes. If the timing of rental payments or other sums due pursuant to the lease are to be varied, it is important to record this. If it is a temporary agreement, then a Side Letter could be used. For any permanent variations, we would recommend a Deed of Variation record those changes. Our expert property team can assist in the drafting of Side Letters and Deeds of Variation to record any amendments to the terms of the lease.

In these unusual times, more changes may be ahead for all of us, and in particular, landlords and tenants will need to work together to a greater extent than they have before. Each lease will be different and specific advice should be taken if you are considering any changes to the terms of the lease. We are here to provide guidance to our clients to protect their property interests.

For further assistance, please contact Nicola Stewart, Natalie Walford, Anthony Shalet or James John.



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