

January 2021

## Property Changes - Where are we now?

With so many changes in the law for both residential and commercial property, and enforcement in particular, it is easy to get confused as to the current position. Here is a short summary of where we find ourselves at the beginning of 2021.

### **Commercial property**

Since Covid-19 first impacted the country, the government has tried to balance the rights of both the landlords and tenants of commercial property. Many landlords would feel the balance has tipped towards protecting the tenants, but however you feel, one message is clear, as set out in the Code of Practice for commercial property, the parties should try and negotiate a solution to the current difficulties in recovery of rent and lack of trade. If the parties cannot agree a way forward, the government has put in place the current moratorium until 31 March 2021 on:

1. forfeiture on grounds of non-payment of rent or other sums due; and
2. presenting winding up petitions

In addition, restrictions on Commercial Rent Arrears Recovery ("CRAR") are also in place until 31 March 2021, so that from Christmas Day 2020, rent equivalent to at least 366 days' must be outstanding and due to the landlord before CRAR can be exercised.

The government has indicated that the moratorium until 31 March 2021 is the last to be granted, but with the country in another lockdown and many businesses forced to keep closed during these times, it raises the question of whether there will be a further extension to the moratorium.

### **So where does that leave landlords with tenants not paying the rent?**

The courts do remain open and for those landlords with tenants who fail to pay the rent and choose not to engage with landlords, the option to issue court proceedings to seek a judgement debt remains. Also, don't forget about checking leases and rent deposit deeds, for the ability to claim on the rent deposit or to go against guarantors, serving a s. 17 Notice, if appropriate, within 6 months of the rent falling due.

Of interest to note, was the government announcement in its 9 December 2020 press release, that there would be a review of commercial landlord and tenant legislation this year and included in that, would be consideration of the Landlord and Tenant Act 1954 Part II, different models of rent payments and the impact of the Coronavirus on the market. We now await further information on this.

### **Residential property**

It has been a torrid time for many financially and for those living in rented accommodation, the pressure of having to pay the rent when your income has ceased is a daunting prospect. Whilst currently the

courts are open and residential possession proceedings continue to be processed, amongst the changes are the introduction of new measures requiring landlords to explain how the coronavirus pandemic has affected either party. Of particular relevance, are the new restrictions in place on residential evictions in England until 21 February 2021 (and until 31 March 2021 in Wales), with exceptions for the most egregious cases, such as anti-social behaviour, extreme arrears of rent and illegal occupation.

In addition, landlords are still currently required to provide 6 months' notice seeking possession to tenants occupying under tenancies, until at least the 31 March 2021, with some limited exceptions. For renters struggling and who require additional support, there is government funding in the form of Discretionary Housing Payments.

Big changes are afoot for leasehold premises following the announcement by the government this January of the introduction of the right for many leaseholders to extend their residential flat lease length to 990 years with a zero ground rent. The aim of the changes to be introduced, we understand, will make the process easier and cheaper for leaseholders with the abolishing of "marriage value" and the use of an online calculator to enable leaseholders to find out how much it will cost them to extend their lease or buy their freehold.

The government has also announced that it will be establishing a Commonhold Council, which will be a partnership of leasehold groups, industry and government to prepare leaseholder for the take-up of Commonhold. Commonhold itself is not a new concept and the legislation enabling Commonhold has been around since 2002. Commonhold allows homeowners to own their flat and houses, previously owned as leasehold, on a freehold basis. The rest of the building forms the commonhold and this is owned and managed jointly by the flat owners. The intention is that the flat owners have greater control over the costs and management of the building.

The legislation addressing the changes, is, we understand, to be brought forward in the upcoming session of Parliament. This will then allow us to have a greater understanding of the changes currently outlined by the government.

**If you require advice on property enforcement matters, please contact either Nicola Stewart or Aaron Heslop of our Dispute Prevention & Resolution team.**



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