

# Commercial concerns

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**Daniel Stern looks at the legal issues involved in making the transition from a residential landlord to commercial property**

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**I am a residential landlord looking to move into commercial property because of the tougher tax regimes being implemented in housing. What legal issues should I be aware of when making this transition?**

Tax relief on buy-to-let mortgage interest payments for residential property has been significantly reduced, resulting in all such properties, as well as second homes, incurring an extra 3% stamp duty.

Commercial property is not without its difficulties either; this article details some of the common problems landlords experience in this area as well as how best to mitigate them.

## **Insolvent tenants**

If a tenant becomes insolvent the lease will probably be disclaimed, leaving the landlord with an empty property and ? once it is repossessed ? a business rates liability, after any relevant relief. Not only will this leave a hole in the owner's income, it will also seriously affect the value of its investment.

Landlords should therefore assess the commercial viability of any proposed tenant carefully, to determine its ability to pay the sums due under the lease. This can be done by considering its accounts, which are available from [Companies House](#) , requesting current management accounts if possible, and visiting any other premises it may be occupying to determine how busy these are. Overall, landlords need to have a good idea of the health of a tenant's business before agreeing to lease a property to it.

## **Rent arrears action plan**

Carrying out thorough due diligence before agreeing any leases can minimise the risk of tenants not being able to keep up payments. Owners can agree that a rent deposit is taken and the terms for when it can be used, after which it should be topped up by the tenant.

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Asking the tenant to provide guarantors and, if it is a corporate tenant, requesting that the

directors guarantee the company's payment of the rent and performance of the other covenants in the lease, is advised. Due diligence should be carried out on the ability of those directors to pay the rent and other outgoings due in the lease should the company default.

## **Lasting damage**

Dilapidations, whether during or after the lease term, can significantly dent a landlord's return. If owners have let the property on a full repairing and insuring lease, then in theory they should be able to recover the cost of the repairs from the tenant. However, depending on the lease terms and the point at which the dilapidations schedule is served, recoverability can be affected.

For instance, there is a statutory cap pursuant to section 18 of the [Landlord and Tenant Act 1927](#) that limits recoverability to the diminution in the value of the property consequent on the disrepair, if the schedule is served at or towards the end of the term. This act also raises supersession arguments, meaning that the value of the repairs can be superseded by the landlord's own redevelopment plans.

Carrying out regular spot checks on the property and acting swiftly can help reduce any lasting damage, as can appointing an experienced solicitor and surveyor who are familiar with the law and the arguments raised by tenants seeking to minimise their repair liability or get out of it entirely.

## **Subletting**

Tenants subletting or assigning premises without consent can present a number of complicated legal issues according to the particular circumstances of the case. The best way for landlords to prevent these occurring is to keep a careful watch on who pays the rent and visiting the premises frequently to determine who is in actual occupation, providing this is done in accordance with the lease terms.

If the landlord becomes aware of a third party being in occupation, it should immediately put a rent stop in place, and notify the tenant of its breach, what it must do to remedy it, if anything, and the action that will otherwise be taken. A well-drafted lease is a first line of defence, as this will allow the necessary steps to be taken to remedy any occupation issues.

## **Squatters, vandalism and theft**

Advertising vacant premises can create issues of its own, because those who target vacant premises for occupation become aware of their availability. Landlords should ensure that any vacant premises are properly secured ? making this the tenant's responsibility if the lease has not expired ? and regularly visiting, or appointing an agent to visit, the property to inspect and manage it while vacant.

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## **Further information**

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