

## Landlord insolvency

A landlord's insolvency leaves tenants in a situation of uncertainty. What happens to you, the tenant, when your landlord goes bust?



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Christina is a senior associate in our Property team and has a broad range of experience in commercial property transactions. She acts on the acquisition and disposal of investment properties, advises developers and investors on the development of sites and handles all aspects of landlord/tenant and general real estate management work.

### Christina Tennant answers the most important questions tenants will have at this time

The most pressing question any tenant will have if a landlord is insolvent is 'will I be thrown out of my premises?'

The good news is that, generally, the answer is no – your lease remains valid.

One exception is where your landlord's insolvency practitioner disclaims your lease as 'onerous property'. A disclaimer terminates the insolvent party's obligations under the lease but does not end the lease. An unusual situation arises where the tenant can lawfully remain in occupation but with a landlord who has no continuing obligations under the lease, which is less than ideal. Nevertheless, if your lease is on commercial arms' length terms and is generating an income for the insolvent party (through the rent you are paying), the superior interest will often simply be sold subject to your occupation.

If your landlord has sublet to you (i.e. it is a tenant itself), then the other exception is where your landlord's lease could be forfeited by the ultimate landlord. This will end your lease automatically. You are entitled to apply to the court for relief from forfeiture. However, the court is likely to expect your landlord's arrears to be paid and for you to take a new lease of the same premises and at the same rent as your landlord's lease. This is an unattractive deal if you only sublet part of your landlord's premises. Hopefully the ultimate landlord will be keen to keep you (and your rent) in the circumstances, and will open separate negotiations with you about remaining.

### Rent

The insolvency practitioner will contact you with instructions about rent payments.

If your landlord has sublet to you, you would be wise to contact your ultimate landlord as well. The ultimate landlord may serve a statutory notice on you, which will enable them to take the rent direct from you.

### Rent deposit

If your rent deposit is held in an account in your own name, then the account remains your property and outside the insolvency process. If the deposit is held in an account in your landlord's name, you will need to prove that the account is held on trust for you and therefore should not disappear into the insolvency.

### Upkeep

If the landlord is insolvent, it is unlikely to be doing the repairs for which it is responsible. Whether you are able to recover any of the service charges you have paid, but which haven't been spent on upkeep, will depend on the circumstances.

In making any claim against the landlord, you will join the ranks of the unsecured creditors.

### What to do

It is best to seek legal advice as soon as possible on the best course of action to protect yourself.