

---

# GUIDE TO LANDLORDS WHEN TENANTS GO INTO ADMINISTRATION

---

Administration is prevalent in the current market conditions. Its purpose is to give an insolvent company an initial breathing space from any enforcement action by its creditors so it can seek to secure the sale or re-financing of the business or part of it.

Pre-pack Administrations are now commonplace. In such cases, a buyer for the business has already been found and the purpose of the Administration is to allow for an immediate sale of the business free from any obligations or liabilities that the purchaser does not want to assume. Such Administrations may be particularly prejudicial to landlords as they may involve either the parting of possession of their premises without any consent or non-payment of rent whilst unwanted premises are cleared out and abandoned.

In order to fully protect their interests, landlords need to act quickly when a tenant goes into Administration. The type of action required will generally depend on whether the premises are over-rented or under-rented and whether they are integral to the tenant's business.

A landlord will either want to forfeit the lease and obtain the premises back or to ensure the Administrator pays rent during the period of Administration. The points below should be noted:-

## WHERE FORFEITURE IS PREFERRED

- Rent should not be demanded or accepted or any other steps taken that would waive any breach giving rise to the right to forfeit.
- Administration in itself will normally give rise to a right to seek to forfeit.
- Unless the Administrator consents, permission of the Court is required to forfeit.
- The Court will balance the interests of the landlord against the interests of the company's creditors when deciding whether to grant permission.

---

**"The most respected dedicated  
real estate firm in London."**

*From Chambers UK - A Client's Guide to the Legal Profession 2008*

- Where the premises are required for the purposes of the Administration, the Court will not normally grant permission to forfeit but may well require the Administrator to pay the rent payable under the lease but this will only be from the time the Administrator first makes use of the premises until such time as such use ceases.
- The Court may well overlook deliberate breaches of the covenants in the lease (such as the parting with possession to a purchaser of the business) if this is in the interest of realising greater sums for the creditors
- It may take considerable time to forfeit a lease because of the need to first obtain permission from the Court before any forfeiture proceedings can be progressed.

## WHERE RENT RECOVERY IS PREFERRED

- An Administrator is not liable for rent outstanding for any period prior to the Administration.
- An Administrator will not normally be liable for rent accruing due in the period between Administration and the Administrator deciding to retain the premises.
- A landlord should dispute any request by the Administrator for any rent free period where use of the premises is made from the start of the Administration.
- Rent should be payable at the rate provided for by the lease but a landlord has to be aware of the possibility that an Administrator may cease using the premises if it cannot afford the full rent and no rent will then be recoverable.
- Rent should not be accepted from a purchaser of the business until an assignment has been agreed and completed.
- Where use is made of the premises, rent should be recoverable as an expense of the Administration which means it is payable out of the company's assets and has priority status.

## THE LEADING CASE AUTHORITIES ARE:-

### Balancing interests of landlord against those of the creditors

Re Atlantic Computer Systems PLC (1993). As now recently applied in Innovate Logistics –v- Sunberry Properties (2008).

### Rent payable automatically as an expense of the Administration

Re Toshoku Finance UK PLC (2002) and Exeter CC-v-Bairstow (2007).

### Administrator making use of the premises and incurring rent liability

Re ABC Coupler & Engineering Company Limited (1970)

### Rent payable at rate provided for by lease

Thomas-v-Ken Thomas Ltd (2006)

This briefing offers general guidance on insolvency issues. It reflects the law as at March 2009. The circumstances of each case vary and this note should not be relied upon in place of specific legal advice.

For further information, please contact:

[Jonathan Ross on 020 7863 8388 or jmross@forsters.co.uk](mailto:jmross@forsters.co.uk) or  
[Jeremy Whiteson on 020 7863 8370 or jpwhiteson@forsters.co.uk](mailto:jpwhiteson@forsters.co.uk)