

BANKRUPTCY AND REPOSSESSION OF LEASEHOLD PROPERTY

A recent Court of Appeal decision has confirmed that a landlord did not require the court's permission to repossess the leasehold property of an undischarged bankrupt (or a debtor subject to a debt relief order) who defaulted under the terms of the lease.

The right to take possession of the property existed to allow the landlord to protect itself from losses resulting from a continuing default. Exercising this right did not give the landlord any better chance of recovering the outstanding rent, which was an unsecured claim in the bankruptcy estate. Any payment of future rent would come from the debtor's income and forms part of his reasonable domestic expenditure, which falls outside the assets available to satisfy creditor claims.

The court also confirmed that an application for an order for repossession of property subject to an assured tenancy does not fall within the prohibition on either:

- Creditor enforcement action against a bankrupt's property.
- The moratorium on creditor action against a debtor subject to a debt relief order.

What is an assured tenancy?

- An assured tenancy is a type of residential property that provides the tenant with a degree of security of tenure.
- A key feature of an assured tenancy is its limitation on the:
 - landlord's ability to bring the tenancy to an end; and
 - grounds on which the landlord can bring the tenancy to an end.
- A landlord can end an assured tenancy by obtaining a court order allowing him to repossess the property if one or more of the following grounds apply:
 - the tenant has failed to pay rent for a period of eight weeks or more;
 - the tenant has fallen behind with payment of the rent; or
 - the tenant is consistently late in paying the rent.

- An assured tenancy will continue until the landlord actually retakes possession of the property. The court may make a suspended order for possession in favour of the landlord.
- A tenant that is subject to a suspended possession order does not have to give up possession of the premises, provided that he complies with the conditions set out in the order.

Bankruptcy: creditor enforcement action

- One of the core principles of bankruptcy is that all unsecured creditors of the bankrupt receive a share of the proceeds from the realisation of the bankrupt's insolvent estate. Their share is proportionate to the amount of the debt that the bankrupt owes them.
- Creditors are prevented from enforcing their claims against the bankrupt during the course of the bankruptcy (for example, a creditor will need to obtain the court's permission before taking any action against an undischarged bankrupt).

What is a debt relief order (DRO)?

A debtor who is subject to a DRO has the benefit of a moratorium that prevents creditors taking action against them. From the date of the DRO, no creditor whose debt falls within the scope of the DRO can take any action against the debtor in relation to the debt.

Please call Helen Peach or Alex Lee on 01435 898058 if you would like any further information.