



## **Commercial Landlords - there's a looming deadline you are guaranteed to care about**

**By Avi Barr**

**For Landlords of commercial property, a very important deadline may be looming. It is relevant if you have a former Tenant or former Guarantor who you are still able to pursue under your Commercial Lease for any arrears.**

Under the relevant legislation (Section 17 of the Landlord and Tenant Covenants Act 1995) a former Tenant and their Guarantor are released from any liability if six months passes beginning with the date that any arrears fell due. If you fail to serve the Notice you will lose, forever, any right to claim those arrears from the former Tenant or Guarantor. With the number of commercial leases currently in arrears due to Covid consequences affecting finances for many tenants this issue is a really significant one at the moment.

In most Commercial Leases rent is paid on the traditional quarter days which would mean that any notice served in respect of the June quarter (in many cases in this unique year the first incident of rent not being paid) will expire 6 months after 24 June, on 23 December. Therefore, if you do want to retain your right to collect any rent for the June quarter (and the September quarter can be dealt with at the same time) **you need to serve your Notice by 23 December 2020.**

*“It is important to also check the Lease for the requirements for service of any Notices as a failure to serve the Notice correctly could cause any Notice to be invalid.”*

Even if your Tenant is on a payment plan it would still make sense where there is a former Tenant or Guarantor that you can claim from to serve the Notice. The Notice has a prescribed form, and it specifies the amounts due within the 6 months beginning from the date when the liability arises. The Notice informs the Tenant or Guarantor about the liability and protects the Landlord’s right to seek payment.

*“ Section 17 Notices dos not need to be served on Guarantors of existing Tenants.”*

One unwelcome consequence to bear in mind of serving a Section 17 Notice is that in theory the recipient if they do pay the arrears would be entitled to claim an Overriding Lease. This

would be a Lease in similar terms to the existing Lease but for a few days longer. That Lease would sit between the Landlord and the current Tenant thereby creating a new Landlord and Tenant relationship between the existing Landlord and the previous Tenant or Guarantor. The benefit to the Tenant or Guarantor of taking this step is the ability they then have to control the process and enforce payment or take steps to terminate the Lease in with the occupier. There may therefore be some circumstances in which serving the Section 17 Notice could trigger unexpected or undesired consequences and therefore careful thought should be given before the Notice is served.

**All in all, any Landlords who have potential claims against former Tenants or Guarantors should carefully consider their position and ensure that Notices are served as soon as possible to protect any existing claims.**

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