

# Issues with Insolvent Tenants

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## Overview

- When can a landlord present a bankruptcy petition?
- What can a landlord do when an individual tenant is made bankrupt?

*Bankruptcy*

Do not pass Go,  
Do not collect \$200



## When can a LL present a bankruptcy petition?

- Section 267(2) of the IA 1986 contains **4 criteria** for bankruptcy petition.
  - a) Debts  $\geq$  £5,000
  - b) Debt = “**liquidated sum**” payable immediately or at certain future time
  - c) Debtor “unable to pay”/”no reasonable prospect” (addressed by stat demand)
  - d) No outstanding application to set aside stat demand

## Meaning of “Liquidated sum”

- Not defined by the IA 1986 or predecessor legislation. Reflects long established caselaw on what constitutes a good petitioning creditor’s debt.
- Essential question: has/can the amount of the debt been ascertained or does it depend on some future event?
- See ***McGuinness v Norwich and Peterborough Building Society*** [2012] 2 All E.R. (Comm) 265 for summary of cases:
  - Judgment debt = liquidated
  - untaxed solicitors fees = unliquidated
  - Claim for value of shares = unliquidated if value is at trial date.

## Application to Landlord & Tenant context

Rent ✓

Service  
Charges

- Residential ✗
- Commercial?

Other  
claims ✗?

# What can a landlord do when an individual tenant is made bankrupt?

- Prove for debts once accrued
- CRAR
- Likely strongest remedy is to recover possession: does LL need consent of court?



## *Places for People Homes Ltd v Sharples* [2011] EWCA Civ 813

- Statutory bar in s.285 IA 1986:
  - No creditor may (without consent of court) either (a) “*have any remedy against the property or person of the bankrupt **in respect of that debt***” or (b) “*commence any action or other legal proceedings against the bankrupt...*”
- Problem: does an action for possession (whether founded on forfeiture or service of statutory notice) fall within either provision?
- Answer: **No** – LL’s do not need consent. However, courts have power to stay (s.285(1) and (2)).

## Who should be a party to the claim?



Lease vested in trustee in bankruptcy  
⇒ claim against trustee + occupiers



Protected residential lease does not vest (s.283 IA 1986)  
⇒ claim against T.



## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.**

# Thank you for listening

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