

The Landlord and Tenant Act 1954 ...in 2010

the
LANDLORD'S
view

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Starter for ten...

“Security of tenure provisions in Landlord and Tenant Acts are an anachronism in the modern shopping centre environment”





Why?

- Shopping Centres are **BUSINESSES**. To be successful they should be run for the benefit of **ALL** - the owner, retailer and the shopper alike
- The recession has caused a fundamental shift in the balance of negotiating power
- Inappropriate use of the CVA is undermining the contractual relationship to the disbenefit of owners and occupiers alike



Shopping Centres

- Multi million 'business' assets with significant cashflow at the heart of our major cities
- Owners seeking long term relationships and consensus across entire portfolio
- 'Owners and occupiers' NOT 'Landlord vs Tenant'
- High levels of non recoverable expenditure
- Successful trading environment, high level of occupancy is key to sustainable income growth
- Owners must constantly review retailer offer

Risk and reward

- For an Owner, knowledge of retailer turnover is the ONLY true way to measure success
- Owners can offer help to retailers whose turnover is falling
- If the retailer structurally fails, the Owner must be in a position to replace with another to benefit the business as a whole
- In a Shopping Centre, the L&T renewal rights don't reflect sensible business practice
- The risk is not shared - The Landlord needs ground!



A business.

- Basic economics - the recession coupled with over-supply of floorspace and too little demand = retailers in driving seat
- Over last few years - shorter leases, monthly rents, service charge caps, centre repairs on hold, repairing obligations watered down, larger capital contributions, break options and longer rent free periods - all common
- In secondary centres and centres held pending development - rates-only deals in existence
- Overgeared developers into administration - Banks in charge
- Development pipeline off - only 4 schemes currently on site



A business.

- Lack of new floorspace starting to filter through - anecdotally deals maybe hardening
- Greater understanding from retailers that progressive owners do value the 'relationship' at the portfolio level and that it is the owners role to maximise trading performance
- This collaborative culture leads to less case law and unnecessary dispute
- '54 act doesn't exist in Scotland, and there's no security of tenure in the Outlet sector
- The leasebook approach





But...

“What if there was a way we could **save** our company, **get rid** of overheads, costs and staff, **rebuild** our sales and profits **without** closing it?

We **don't** want to see all of our hard work destroyed and have the misery of going bust”!
There is a **great** solution for your problem, and we've found it...

introducing...

the
**Company
Voluntary
Agreement**

...or CVA

CVA's

- Pre packs were the start - Whittards, USC, Officers Club
- MFI & Woolworths failed
- The rescue culture of the CVA was initially 'welcomed' by owners and tacitly supported by the BPF
- JJB, Focus and Suits You were praised for their approach
- "Legalised robbery?" - *Retail Week*



CVA's...



Company Voluntary Arrangement benefits for YOUR company.

- Company Voluntary Arrangements (CVA's) can improve cashflow, quickly
- Stop pressure from tax, VAT and PAYE while the CVA is prepared
- A company voluntary arrangement can cut costs quickly
- Company voluntary arrangements can terminate employment contracts, leases, onerous supply contracts and all with NIL CASH COST
- You can terminate landlords leases with NIL cost with a well written CVA ! Simply walk away from the lease, using our expertise

Source: Internet website

- But the approach of some Insolvency Practitioners has tainted the process
- Black's, Flannels etc have led to a 'backlash' from Owners. It is seen as sharp practice
- These are well advised businesses, the lease contract was willingly entered into at cost
- If businesses can walk away from their obligations, what is the point of any contractual arrangement?

CVA's.

- The unscrupulous IP and occupier can disadvantage owners
- Rewards poor management
- Disadvantages other occupiers who have similar burdens
- Undermines normal contractual business arrangements
- Is plain wrong

“The Enterprise Act was intended to create a ‘recovery culture’ and we support that principle. However, the scope for abuse needs addressing and, until it is addressed, we will not be blindly supportive of all CVA proposals.

“This may attract some criticism, but balance that against our shareholders’ long term interests, the need to maintain a fair market for all retailers and the old fashioned virtue that sometimes you just have to take a stand.”

Richard Akers - Land Securities



Conclusions.

- The modern shopping centre is a testimony to the skill and passion of the whole property industry.
- Well designed and managed they provide a heart to an urban environment, a vibrant trading platform for the innovative retailer and stable income growth for the owner.
- The L&T Acts, particularly security of tenure, do NOT enable the owner to manage for the benefit of the whole centre. They are anachronistic, do not provide a fair balance of risk, and are themselves being contractually undermined by sharp practice of the few.



thank you!