

Commercial Rent Arrears Recovery (CRAR)

Vicks Enforcement



COMMERCIAL RENT ARREARS RECOVERY (CRAR)

As of the 6 April 2014, Landlords are no longer able to exercise their common law right to distrain for arrears of rent. By the introduction of Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the Act) and the Taking Control of Goods Regulations 2013 (the Regulations), the common law right to distrain, or levy distress, for all rent arrears is abolished and it is replaced by a new, narrower, statutory right for the landlord under a lease of commercial premises to use the Commercial Rent Arrears Recovery (CRAR) enforcement procedure set out in the Act.

CRAR enables a landlord to instruct a Certificated Enforcement Agent (EA) to take control of goods at the demised premises up to the value of rent arrears plus costs provided that: -

1. There is a written lease.
2. The premises are used for commercial purposes. Any residential use or occupation means CRAR cannot be exercised to collect rent on mixed use premises unless this use is in breach of the lease.
3. Only the principal rent can be recovered plus any VAT and interest on that rent. CRAR cannot be exercised to recover arrears of service charges, insurance, rates or any other charges due under the lease even if they are reserved as rent in the lease.
4. The right can only be exercised by a Certificated Enforcement Agent (formally a certificated bailiff) instructed in writing to act on behalf of the landlord.
5. The rent is in at least seven days of arrears.

NOTICE

The most controversial aspect of the CRAR regime is the requirement to give 'notice of enforcement' to a tenant. An EA cannot take control of the debtor's goods unless and until the debtor has been given seven days' notice. On receipt of a notice, a tenant can frustrate the process by making an application to Court for an order either setting aside the notice or to stop any further steps being taken under CRAR without a further order.

GOODS

Goods of the tenants are 'bound' by the enforcement notice as soon as it is served. Those goods remain bound until either sold, or, in the case of money used to pay the outstanding amount, until the outstanding arrears are otherwise satisfied.

As to controlled goods, the EA cannot take control of a tenant's goods until the prescribed periods have passed and must do so within 12 months from service of the enforcement notice. When entitled to do so, to take control of the goods, an enforcement agent must:

1. Secure the goods on the premises; or
2. remove the goods from the premises and secure them elsewhere; or
3. enter into a controlled goods agreement.

USING CRAR AGAINST A SUB-TENANT

The Landlord can still require a sub-tenant to pay rent directly to it to clear its immediate tenant's rent arrears, but the process for doing so has changed. The old regime, set out in the Law of Distress Amendment Act 1908, is replaced by a new statutory procedure. This mirrors CRAR, for example it can only be used to recover arrears of principal rent due in relation to commercial premises. The form and content of the notice to be served on a sub-tenant are prescribed, as is the method of service. Unlike the current regime, the notice only takes effect 14 clear days after it is served.

ENTRY

Entry onto premises by the EA should be through normal methods of entry (e.g. doors). An EA can apply to court for the issue of a warrant authorising the use of force to gain entry into the property or into any other premises to take control of the tenants goods. A warrant will also entitle repeated entry.

Reasonable force can be used to re-enter the property via any door, or other usual means by which entry is gained to property. A notice containing certain specified information should be given to the tenant after entry.

REPEATED ENTRY

Repeated entry to the same premises is permitted provided 2 clear days' notice is given. The EA must have determined that there are no or there are insufficient goods of the tenant on the premises to satisfy the sums and either:

1. The agent has reason to believe further goods have been brought onto the premises belonging to the tenant; or
2. certain goods were in use during the original entry.

WHEN CAN CRAR BE USED

CRAR can be used on any day of the week between 06:00 and 21:00, or during the tenant's normal business hours if different.

EXEMPT GOODS

Certain goods including the tenant's 'tools of the trade' will continue to be exempt from CRAR, but only up to a value of £1,350. Once control of goods has been exercised there are detailed procedures for dealing with those goods and selling them.

FEES

The Taking Control of Goods (Fees) Regulations 2014 set out what fees the EA can recover from the tenant or from the proceeds from any sale.

1. Compliance stage - a fixed fee of £75
2. Enforcement stage - a fixed fee of £235 and 7.5% of the sum recovered exceeding £1500
3. Sale or disposal stage - a fixed fee of £110 and 7.5% of the sum recovered exceeding £1500

The compliance stage is all activities relating to enforcement from the receipt of the EA instructions. The enforcement stage is all activities relating to enforcement from the first attendance at the premises, but not including the commencement of sale or disposal stage. The sale or disposal stage begins on the first attendance at the property for transporting goods or preparation of sale on the premises.

In addition the enforcement agent can recover "disbursements." These are the expenses reasonably and actually incurred for storing goods, hiring a locksmith to gain entry, and court fees incurred by the EA. Also recoverable are the auctioneers expenses incurred in any sale such as commission, out of pocket expenses, and advertisement fees. There is also provision for recovery of commission of 7.5% for internet or other sales. The EA may also make an application to the Court for the recovery of exceptional disbursement.

CONTROLLED GOODS AGREEMENTS

Formally known as "walking possession agreements" these agreements permit the tenant to retain custody of identified goods should the rent be paid within an agreed timescale. During this time, the EA will take control of the goods but agree not to dispose of them before the debt is paid. If the tenant fails to comply with the agreement the EA may re-enter the property to inspect or remove the controlled goods for sale.

TIME LIMIT FOR TAKING CONTROL OF GOODS

The EA must exercise CRAR within 12 months of the date of the enforcement notice. An application can be made to the Court to extend this period.

SALE OF CONTROLLED GOODS

Goods must be sold at a public auction or as ordered by the court. The tenant is to be given at least seven clear days' notice.

CAN CRAR RULES BE MANIPULATED?

There is a wide anti-avoidance section. Any contractual provision intended to give the landlord a right to seize goods to recover arrears other than through CRAR, or to modify the CRAR procedure, is void. But the parties can agree to prevent or restrict the exercise of CRAR.

OFFENCES

If any person obstructs the EA or intentionally interferes with controlled goods without lawful excuse, they commit an offence. On summary conviction, that person would be liable to imprisonment for not more than 51 weeks or a fine currently up to £2,500, or both. However that offence only applies to controlled goods, it does not apply to the goods which are bound.

IMPORTANT POINTS

1. Using CRAR will waive any right to forfeit that may have arisen.
2. Before using CRAR, you should consider:
 - > what difference does it make if the right to forfeit is lost?
 - > How will other existing breaches of the lease (apart from non-payment of rent) be dealt with?
3. Allowing residential occupation should be considered carefully when agreeing the permitted use of premises as you may be limiting the enforcement remedies available.
4. The tenant can bring a claim against the EA or the Landlord for a breach of the CRAR provisions.

LEGISLATION

- > [Tribunals, Courts and Enforcement Act 2007](#)
- > [The Taking Control of Goods Regulations 2013](#)
- > [The Taking Control of Goods \(Fees\) Regulations 2014](#)

> [Click here to view Vicks Enforcement commercial rent recovery service](#)

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