

Property & Construction Department

# Landlords be Vigilant

## Introduction

Changes last year to rating law alter the way in which commercial rates are treated in Ireland. Part 5 of the Local Government (Reform) Act 2014 (the “Act”) promised to simplify this complex statutory code. We take a look at how this legislation has impacted on landlords in respect of commercial properties.

## Notification Requirements

The notification requirement introduced by the Act is its most controversial aspect. Section 32 of the Act imposes a duty on an owner of property to notify the rating authority, in writing within fourteen days, of any transfer of interest in a property that changes the rateable occupier. Consequently, where a tenant is assigning, sub-letting or sharing occupation, although a landlord may not be a party to the transaction, it is the responsibility of the Landlord, as owner, to notify the rating authority of the change of occupation.

## Risk of Penalties for a Landlord

A penalty may be imposed if the rating authority is not notified within fourteen days. This penalty may be the equivalent of up to two years of the outstanding rates which were due by a previous tenant. Such arrears attach as a charge over the property for twelve years.

## Concern

Landlords have expressed extreme concern over the short fourteen day timeframe. The notification obligation is placed on the owner, rather than the transferring occupier which is particularly onerous for landlords who may not be aware that the property has been assigned or sub-leased, or that there are outstanding rates due to the local authority.

## Form of Notification

Further inconsistencies arise regarding the form of notice demanded by rating authorities. Many local authorities are now insisting that, to comply with section 32, notification to them must be in a specified form. These forms vary between local authorities and require detailed information such as the valuation number of the premises and the tax numbers and types of the transferring parties.

A prudent landlord should ensure that they are aware of the form of notification required by the particular local authority, and that they have all the required information prior to the transfer, to enable them to comply with the notification requirements within the fourteen day timeframe.

## How can landlords protect themselves?

Landlords should keep a close eye on their commercial properties and ensure that they are aware of any change of occupation of any nature.

Stringent wording in a lease requiring prior formal written consent from the landlord before any form of alienation may occur is vital to ensure that landlords are aware of any proposed assignment, sublease or sharing of occupation in their premises.

This will enable the landlord to

- (i) ensure all rates are paid up to date prior to granting formal consent and
- (ii) have the necessary information to comply with notification under section 32.

Landlords may also consider inserting an obligation on the part of a tenant in a lease to provide periodic evidence that rates have been discharged which could prevent large rates arrears to be built up. Prior to consent being granted, it is imperative that landlords be fully satisfied that all commercial rates have been fully discharged.

## **Conclusion**

Landlords need to be aware of the duties and penalties imposed by the Act and ensure they

- know who is occupying their premises;
- have strict consent measures in place regarding any change of occupancy;
- ensure rates are discharged in full prior to issuing consent to a change of occupancy and
- have all information needed to meet the notification requirements within the fourteen day timeframe.

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