

Mackrell

Property Litigation

A Step by Step Guide to the Recovery of Service Charge Arrears



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1. Preliminaries – send the correct demand

Make sure you read your lease and understand it. You must send the Service Charge Demands in accordance with the requirements under the lease. If the demands are not sent correctly you could face a technical defence to non-payment by the lessee. Check the following:

- When you should make the demand?
- Are the services provided for within the lease?
- Include the landlords full name and address (preferably not a PO Box or c/o address).
- Enclose a summary of the tenant's rights and obligations.
- Ensure that it has been sent within 18 months of the costs being incurred.
- If you are unable to serve within 18 months incurring the costs, you should notify the tenant of those costs by way of Section 20B Notice of the Landlord and Tenant Act 1985.

2. Preliminaries – send the demand to the correct address

The most common reason given by a lessee not paying their service charge is that they have not received the demands. If the unpaid demands are more than 18 months old then the lessee could argue the demands were not received and therefore not payable. You can tackle this by making sure you do the following:

- Keep an accurate address record on your systems.
- Collect and record any change of addresses.
- If you have lessees who correspond via email, then always ask them for their physical correspondence address.
- If your demands are being returned then check the address on the Land Registry Office Copies. Evidence of good housekeeping will always help you should matters escalate to court proceedings.
- If the lessees live abroad then ensure that you have an address for service in the country they are residing in.
- If these lessees have managing agents and the demands are not being paid then please ensure you check if the agents are still acting for the lessee. If they are not, get confirmation of this in writing and obtain a forwarding address for the new agent or the lessee.

3. Act fast

Do not let the arrears build up. Act fast. Communicate with the lessee to find out why they are not paying. There may be a genuine excuse. If they want time to pay, get them to admit the debt in writing discuss arranging an instalment plan. If communication fails then send formal demands.

4. Instruct solicitors

Don't be afraid to instruct solicitors to send a formal Letter of Claim and if necessary issue legal proceedings. You can usually recover any reasonable legal fees incurred, from the lessee, under the terms of the lease.

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