

# **RENT & PROPERTY RECOVERY SERVICE**

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## THE CIVIL LITIGATION DEPARTMENT

Davis Gregory is a long established law practice in Cheltenham whose origin can be traced back to 1931. We operate from Regency buildings in the centre of Cheltenham and provide legal services to business and private clients. Since 2003 we have been a Limited Company, Davis Gregory Limited.

The Rent & Property Recovery Service is offered by our Civil Litigation Department, which is headed by Tim Wheeler, who is a Consultant with the company. Tim, an experienced litigator, is a Fellow of the Institute of Legal Executives and a Member of the Institute of Credit Management. Tim is well known in the debt recovery field. Tim is assisted by Deb Larcombe and Sarah Bruton.

When a tenant defaults on payment under a tenancy agreement or breaches terms of that agreement, we recognise that it is important for Landlords to be able to recover the arrears and/or the property as quickly as possible. We simplify possession claims for residential premises into three easy stages. We offer a fixed fee service so there are no hidden charges. Where possible we issue proceedings online to speed up the process. We understand that Landlords require quick action and an inexpensive service. As Solicitors, we can recover set court fees and costs from the tenant. With a fixed fee service you are able to assess at the outset, the costs that will be involved.

Davis Gregory frequently instruct Sheriffs High Court Enforcement Limited, who are High Court Enforcement Officers and are able to enforce payment of Judgments anywhere in the country. It is our belief that these are the most effective and efficient Enforcement Officers on the High Court Enforcement Officer's panel.

We also have close links with Process Servers/Enquiry Agents, who are able to provide such services as serving court papers and the tracing of missing debtors.

Our Civil Litigation Department acts for a wide range of commercial organisations, both local and national. Our clients include a large building supplies merchant, a national oil/fuel supply company, a national damp proofing and preservation company, a major plant hire company and a national greeting cards supplier. We can act for Landlords and Lettings Agents in relation to properties all over the country. We are happy to put you in touch with any of our clients to confirm the quality of our service.

# **Possession Claims for Residential Premises**

## **Service of Notice**

### **Stage 1**

We arrange for a Notice to be served upon your tenant. This is when most tenants realise how serious you are and quite often you do not need to take any further action.

If the tenant does not pay the rent arrears or leave the property after stage 1 then you proceed to the issue of proceedings at stage 2.

We can serve many types of Notice. We usually serve one of two Notices under the Housing Act 1988. A section 8 Notice is a fourteen day Notice seeking possession due to rent arrears, nuisance or breach of tenancy. A section 21 Notice is a two month Notice to terminate a tenancy agreement and seek possession. It is possible to serve both Notices simultaneously. A section 21 Notice would apply when an assured shorthold tenancy agreement has or is about to come to an end.

It is important that the Notices are correct as the smallest mistake can cause a delay. To ensure that there is no argument from tenant that he/she has not received the Notice, we arrange for the Notice to be served by way of a Process Server.

### **Fees and Charges**

We make a standard charge of £150 plus VAT for the preparing of the Notice.

There will be a Process Server's fee of £75 plus VAT incurred in respect of service of the Notice

## **Issue of Court Proceedings**

### **Stage 2**

If the tenant fails to comply with the Notice served at stage 1 then we can issue proceedings for possession of the premises and recovery of the rent arrears. Where applicable the proceedings are issued online to speed up the process. There are two types of proceedings. The first set of proceedings can be issued where you can seek possession and/or rent arrears. The second is where proceedings are issued for possession only following a Section 21 Notice and are known as accelerated possession proceedings. An accelerated possession can be granted without the need of a court hearing and the process is therefore quicker. If you wish to recover rent and have gone down the accelerated route, then the rent can be recovered as a separate action and please see pages 7 - 9.

### **Section 8 Notice Proceedings**

Court proceedings are issued online and served upon the tenant. In addition to possession any arrears of rent can be claimed. A court hearing date will be set, usually 6 -10 weeks after the issue of proceedings. An Advocate will be instructed to represent you at the court hearing. You will need to attend the court hearing with the original tenancy agreement and an up to date schedule of exactly how much rent is owed.

Providing there is no valid defence to your claim then the court, at the hearing, should grant possession and judgment for the rent arrears. If there is a valid defence the court will give directions for the determination of the case. Our fixed fee service would not apply to a defended action and if the matter was defended we would give a schedule of the fees and costs that would likely to be involved in dealing with a defended action.

There should however, be no defence to your claim and the court at the hearing will normally order the defendant to leave the property in 14 days time.

#### **Fees and Charges**

Our fixed charge is £450 plus VAT.

There will be a court fee payable of £150 and an Advocates fee of £150 plus VAT.

The court fee will be recoverable along with a sum between £107.25 and £157.25 towards charges.

### **Section 21 Notice Proceedings**

Accelerated possession proceedings can be issued in such circumstances and possession order can be obtained without the need of a court hearing. The process is therefore quicker and less expensive than section 8 Notice proceedings.

In accelerated possession proceedings court action is served upon the tenant and if no defence is forthcoming within 14 days from service of the proceedings by the court, then we can apply to the court for a possession order to be granted by the court without the need of court attendance. With accelerated possession proceedings you can only claim possession and not seek recovery of rent. Recovery of rent can be dealt with in a separate action. (Please see recovery of rent arrears only on pages 7 -9).

#### **Fees and Charges**

Our fixed charge will be £400 plus VAT.

The court fee payable will be £150.

The court fee will be recoverable along with a sum of £79.50 towards charges.

## **Bailiff takes Possession**

### **Stage 3**

If the tenant fails to leave by the possession date set by the court then we will instruct the court Bailiffs to remove the tenant(s) and recover your property.

Normally the Bailiff will set a date, usually 3 – 6 weeks after the issue of the warrant for possession.

We will advise you of the Bailiff date and require you to be at the property 30 minutes before the time set by the Bailiff. It is your responsibility to arrange for a Locksmith to be there to change locks after the Bailiff has removed the tenant(s).

Our agent will be in attendance to give the necessary instructions to the Bailiff to remove the tenant(s) if they have not vacated the premises.

If you have a Judgment for rent arrears and proceedings have been taken under a Section 8 Notice, then when instructing the Bailiff to take possession of the premises he could also be instructed to seize any possessions of the tenant(s) to recover your Judgment sum in full or in part. If you proceeded with accelerated action and rent is not included then you can recover the rent in a separate claim and please see pages 7 - 9.

### **Fees and Charges**

Our fixed charge will be £150 plus VAT.

There will be a Bailiff's fee payable of £95 to cover the recovery of the property and any Judgment for rent arrears. There will be an Agent's fee payable of £75 plus VAT for attendance with the Bailiff upon the eviction date.

## **Court Action for Rent Arrears only**

### **Letter Before Action**

Upon receipt of your instructions we will consider the tenancy agreement and statement of arrears and forward a letter before action to the tenant for payment of the rent arrears. We make it clear to the debtor that if payment is not made then court proceedings will be instigated and if such a step is necessary then in addition to the debt, we will seek payment of interest, court fees and costs.

### **Issue of Court Proceedings**

If payment is not received in response to the letter before action, then court proceedings are issued instantaneously on-line, so there is no delay. In addition to the debt we will claim interest at the rate of 8% under Section 69 of The County Courts Act 1984 unless the agreement states otherwise. As solicitors we are also able to recover costs in addition to court fees.

The court serves the proceedings upon the debtor, who then has 14 days in which to respond. If the debtor fails to respond then Judgment can be entered immediately by default. Judgment is entered instantaneously on-line after the expiry of the 14 days from service.

If the defendant files an Admission to the debt then Judgment will be entered either after acceptance of the repayment proposals or determination by the court.

Upon the issue of proceedings it is necessary for us to sign a statement of truth on your behalf confirming that the debt is due and there is no valid dispute. We will take your instructions to recover a debt as specific authority for us to sign the statement of truth on your behalf. You can be held in contempt of court and suffer sanctions for any statements that are not true.

### **Enforcement by way of Bailiff/High Court Enforcement Officer**

Upon receipt of the sealed Judgment from the Court the usual way to enforce payment is by instruction of the Bailiff or Enforcement Officer. For claims under £600 the County Court Bailiff has to be used. For claims over £600 we transfer all claims to the High Court and instruct a High Court Enforcement Officer, who is more effective than the Bailiff, to recover the debt.

Davis Gregory frequently instruct Sheriffs High Court Enforcement Limited (SHCE), who are High Court Enforcement Officers and are able to enforce payment of Judgments anywhere in the country. It is our belief that these are the most effective and efficient Enforcement Officers on the High Court Enforcement Officer's panel. At SHCE's request we do undertake preparation of court documents to transfer proceedings to the High Court of which we charge SHCE £25 + VAT per matter, so there is no charge to you, nor does it effect you in any other way. This is a court process and other Enforcement Officers have links to solicitor run lodgement centres and who would complete

the transfer work for creditors free of charge. If you would prefer to use different Enforcement Officers to SHCE then we are happy to do so. By you instructing us to act you agree that this arrangement with SHCE will apply to the work we undertake for you.

### **Defended Actions**

The debtor can file an Acknowledgment of Service to the court proceedings, indicating an intention to defend the matter. In such cases the debtor will have a further 14 days to file a Defence. Upon the filing of a Defence a disputed claim will be allocated either to the Small Track, Fast Track or Multi Track, depending on the size of the debt, and will be dealt with as a defended action. For further information please see pages 14 - 17 in this brochure.

## **FEES AND CHARGES**

### **Standard Charge**

We make a standard charge of £100 + VAT for considering tenancy agreement, advising you and corresponding with tenant(s) prior to court proceedings for rent arrears.

### **Court Proceedings**

If court action is necessary then the following court fees and our charges will apply. The court fees and our charges will be recoverable from the debtor and therefore in a successful court action you will pay nothing. VAT is applicable on our charges (not on court fees) although you will be able to reclaim back the VAT provided you are VAT registered. There are no hidden charges. If the debt is not recovered, for example, the debtor disappears or becomes insolvent, then you pay the court fees applicable and our charges as set out below. You are able to assess at the outset what a case will cost you if there is not a successful recovery.

### **Court Fees**

<b>Debt Amount</b>	<b>Court Issue Fee</b>	<b>Bailiff/Enforcement Officer Fee*</b>
£25.00 to £125	£25	£100
£125.01 to £300	£25	£100
£300.01 to £500	£35	£100
£500.01 to £600	£60	£100
£600.01 to £1,000	£60	£50
£1,000.01 to £1,500	£70	£50
£1,500.01 to £3,000	£80	£50
£3,000.01 to £5,000	£100	£50
£5,000.01 to £15,000	£210	£50

\*Enforcement Officer is instructed on all claims over £600 and an abortive fee of £60 plus VAT is payable if debt is not recovered.

## Our Charges

As solicitors we are able to recover costs from the debtor. In a successful action we will retain the costs and compensation recovered from the debtor to cover our charges. VAT will be applicable, although you will be able to claim back the VAT if you are VAT registered. Therefore, in a successful action you will receive IN FULL the debt and statutory interest at the rate of 8%.

Amount of debt		Claim Form	On entering Judgment in default (following an admission)	On enforcement by Enforcement Officer or Bailiff
£25.00 - £500.00	-	£50.00	£22.00 (£40.00)	£2.25
£500.01 - £600	-	£70.00	£22.00 (£40.00)	£2.25
£600.01 - £1000.00	-	£70.00	£22.00 (£40.00)	£51.75
£1000.01 - £5000.00	-	£80.00	£22.00 (£40.00)	£51.75
£5000.01 over	-	£100.00	£30.00 (£55.00)	£51.75

In an unsuccessful action then our charges will be limited to the sum that would have been recoverable from the debtor as per the table above, depending on the stage reached. VAT will be payable upon this fee, although will be recoverable if you are VAT registered.

## **ENFORCEMENT OF JUDGMENT FOR RENT ARREARS**

### **Writ of Fieri Facias/Warrant of Execution**

The usual method of enforcement of a Judgment is by way of Writ of Fieri Facias in the High Court or Warrant of Execution in the County Court. This is the method of enforcement that is used initially in a debt recovery claim and forms part of our fixed price service. If the claim is below £600 the County Court Bailiff is instructed. If the claim is over £600 then the High Court Enforcement Officer is used. The Bailiff and Enforcement Officer will seize goods belonging to the debtor to satisfy the Judgment. The Enforcement Officer is more effective than the County Court Bailiff.

Any goods seized are sold at auction and the proceeds paid to the creditor after deduction of the Bailiff/Enforcement Officer's fees and expenses. It will be helpful if you can provide any information as to specific goods that could be seized, for example, the debtor's vehicle. Clothing, bedding and the debtor's tools of trade are protected and cannot be seized.

It is usual for the Enforcement Officer/Bailiff to enter into walking possession and to place a levy over the goods. The debtor is not able to dispose of the assets, and if he did so he would be in contempt of court. If the debtor fails to pay then the goods are seized and sold.

### **Fees and Charges**

The issue of Writ of Fieri Facias/Warrant of Execution is part of the standard debt recovery procedure and please see information in the fees and charges section on pages 10 – 11.

### **Charging Order**

If the debtor owns or has an interest in a property then we are able to apply for a Charge to be placed over the property. The Charging Order is registered at the Land Registry to protect the creditor's interest. Once the Charge has been secured then if the debtor fails to pay what is due the creditor can apply to the Court for an Order for Sale of the property. The debt would then be paid out of the proceeds of sale.

### **Fees and Charges for Charging Order**

Our charge if the Judgment value is below £1,000.00 is £200.00 plus VAT, if between £1,000.00 and £2,000.00 our charge is £250.00 plus VAT, if between £2,000.00 and £3,000.00 our charge is £300 plus VAT and if over £3,000.00 then our charge is £350.00 plus VAT together with an Advocate's fee of £75.00 plus VAT for the Court Hearing. A sum of £110.00 is recoverable from the debtor towards charges.

The Court fee payable is £100.00, office copy entry fee of £3.00 and a Land Registry fee of £40. These disbursements are recoverable from the debtor.

## **Attachment of Earnings Order**

If the debtor is employed then the Court can order the debtor's employer to deduct a sum from the debtor's wages. An Attachment of Earnings Order can only be granted if the debtor is employed. It would not be appropriate if the debtor were self-employed.

### **Fees and Charges for Attachment of Earnings Order**

Our charges are £100.00 plus VAT for applying for and dealing with Attachment of Earnings Application.

The Court fee payable is £100.00, which is recoverable from the debtor.

## **Third Party Proceedings**

If the debtor is owed money by a third party then it is possible to obtain an Order of the Court requiring that other party do pay the money that is due to the debtor to you to satisfy your Judgment. This is commonly used where the debtor has a bank account. The Third Party Order freezes the funds in the bank account up to the value of the Judgment. This application is only appropriate if the debtor's bank account is in credit, and could not be applied to an overdraft.

### **Fees and Charges for Third Party Proceedings**

Our charge is £300.00 plus VAT. A sum of £143.50 is recoverable from the debtor.

The Court fee payable will be £100.00, which is recoverable from the debtor.

## **Order to Obtain Information from Judgment Debtor**

The debtor can be brought before the Court to be questioned about his/her means. The debtor completes a sworn deposition and we will then be able to advise you of the best way of enforcing payment. The debtor may pay to avoid the Court attendance, and quite often at the Examination hearing the debtor puts forward proposals as to settlement. In the case of a limited company the director is questioned about the company's assets.

### **Fees and Charges for Order to Obtain Information from Judgment Debtor**

Our charge is £100.00 plus VAT for applying for and dealing with the Order to Obtain Information from the Judgment debtor.

The Court fee payable is £50.00 and possibly two Process Server's fees of £75.00 plus VAT. The fees are recoverable from the debtor.

## **Insolvency Proceedings**

### **Statutory Demand**

In cases where you are owed more than £750 you can serve a Statutory Demand under the Insolvency Act 1986. In the case of an individual it has to be served personally upon the individual. In the case of a limited company it has to be left at the company's registered office address. The debtor has 21 days from the date of service to settle the sum due or put forward suitable proposals as to payment and failing this then you can petition for the bankruptcy of the debtor in the case of an individual or the winding up of the company if the debtor is a limited company. Usually the threat of bankruptcy proceedings/winding up action can often produce payment or suitable proposals as to settlement and it is then not necessary to proceed with insolvency petitions.

#### **Fees and charges for Statutory Demand**

Our charge for the preparation and arranging for service of a Statutory Demand is £150.00 plus VAT, which is recoverable from the debtor.

There is a Process Server's fee payable of approximately £90.00 plus VAT, which is recoverable from the debtor.

### **Bankruptcy Proceedings**

If the debtor is an individual and has failed to either respond to a Statutory Demand or execution by way of High Court Enforcement Officer has been returned unsatisfied, then you can petition for the debtor's bankruptcy.

Upon the making of a Bankruptcy Order the Trustee will realise the debtor's assets and if sufficient will make a distribution to unsecured creditors, after the deduction of relevant fees.

#### **Fees and Charges for Bankruptcy Proceedings**

Our charge for bankruptcy action will be £300.00 plus VAT.

The fees payable will be: -

Oath fee	£7.00
Official Receiver's deposit	£430.00
Court fee	£190.00
Process Server's fee	£90.00 plus VAT (approximately)
Advocate's fee	£100.00 plus VAT

These charges and fees are recoverable from the debtor. If a Bankruptcy Order is made then the Petitioning fees and charges are payable before any distribution to unsecured creditors.

## **Winding up Proceedings**

If the debtor is a limited company and has failed to either respond to a Statutory Demand or execution by way of High Court Enforcement Officer has been returned unsatisfied, then you can petition for the debtor company to be wound up.

Upon the making of a Winding up Order the Liquidator will realise the debtor company's assets and if sufficient will make a distribution to unsecured creditors, after the deduction of relevant fees.

### **Fees and Charges for Winding up Proceedings**

Our charge for winding up action will be £400.00 plus VAT.

The fees payable will be: -

Oath fee	£7.00
Official Receiver's deposit	£715.00
Court fee	£190.00
Process Server's fee	£90.00 plus VAT (approximately)
Advertisement fee	£72.05
Company search fee	£6.00
Advocate's fee	£100.00 plus VAT

These charges and fees are recoverable from the debtor. If a Winding up Order is made then the Petitioning fees and charges are payable before any distribution to unsecured creditors.

## Defended Actions For Rent Arrears

### The Tracks

If your claim is defended then upon the filing of the Defence it will be allocated to one of three tracks: -

Small Claims Track	Claims up to £5,000
Fast Track	Claims between £5,000 and £25,000
Multi Track	Claims over £25,000

### **Allocation Questionnaires**

Upon the filing of a Defence we will need to complete an Allocation Questionnaire on your behalf, giving details of witnesses, unavailable dates for trial, proposed directions and indicating the track to which the claim should be allocated.

### **Small Claims Track**

This is for claims less than £5,000. The hearings are informal and take place in open court before a District Judge. There are no strict rules of evidence. The District Judge will take control of the hearing and will hear both sides before making a decision. In certain circumstances the District Judge can decide the case on papers alone.

It is usual for the court, upon allocation to the Small Track, to give directions for the parties to deliver to the court and the other side all relevant documents and, witness statements. This usually has to be done at least 14 days before the court hearing.

Solicitors' costs are not normally recoverable on Small Track hearings and it is not usually economical for you to instruct a solicitor to attend with you. We usually assist with the paperwork and give advice beforehand. It is best to arrange for your representative(s), who can give first hand evidence in support of your claim, to attend and deal with the hearing.

If a case is particularly difficult or a point of law is involved then we are happy to represent you at the hearing. Your representative(s) will still have to attend to give the evidence. An estimate can be given for the Advocate's fee.

**Fees and Charges for Small Claims Track  
Charges**

Value of claim	Our charge where cases are taken to a Hearing or settled at any stage after preparation of document bundle and witness statements	Our charge in cases settled at any stage prior to the preparation of document bundle and witness statements
<b>Up to £500</b>	<b>£250.00</b>	<b>£125.00</b>
<b>£500.01 - £1,000</b>	<b>£300.00</b>	<b>£150.00</b>
<b>£1000.01 - £2,500</b>	<b>£400.00</b>	<b>£175.00</b>
<b>£2,501.01 - £4,000</b>	<b>£500.00</b>	<b>£250.00</b>
<b>£4,000.01 - £5,000</b>	<b>£700.00</b>	<b>£300.00</b>

\*These charges are not recoverable in Small Claims Track. The only amount recoverable would be the amounts set out in the Claim form column of our charges for the issue of proceedings on page 9 You will, at the discretion of the District Judge, if successful, be able to recover witness/travelling expenses for attending court.

**Fees**

Value of claim	Allocation fee	Hearing fee
<b>Up to £300</b>	<b>£0.00</b>	<b>£25.00</b>
<b>£301.01 - £500</b>	<b>£0.00</b>	<b>£50.00</b>
<b>£500.01 - £1,000</b>	<b>£0.00</b>	<b>£75.00</b>
<b>£1,000.01 - £1,500</b>	<b>£0.00</b>	<b>£100.00</b>
<b>£1,500.01 - £3,000</b>	<b>£35.00</b>	<b>£150.00</b>
<b>£3,000.01 - £5,000</b>	<b>£35.00</b>	<b>£300.00</b>

\*The above fees are recoverable from the debtor including the issue fee for the starting of the claim as set out on page 8.

\*If claim is settled at least 7 days before the hearing then hearing fee is refundable in full or part from Court.

**Fast Track**

This is for claims over £5,000 and less than £15,000. Upon allocation to the Fast Track the court will give directions and a timetable for the matter to proceed through to a Trial. It is usual for the Trial to take place within 6 months of the Defence being filed.

The usual directions include:

- Disclosure of Documents
- Inspection of Documents
- Exchange of Witness Statements
- Exchange of any Experts' Reports
- Filing of Listing Questionnaire
- Trial Date

## **Multi Track**

Claims over £15,000 are allocated to the Multi Track. The court will in Multi Track cases usually call a Case Management Conference where the parties will attend and directions will be given, taking into account the requirements of individual cases. The court will need to ensure that the issues are identified and the directions deal with the evidence that needs to be produced.

It is usual for directions similar to those in Fast Track to be given, and the Trial in a standard Multi Track claim should take place within a period of 12 months from the filing of the Defence.

### **Fees and charges in Fast Track and Multi Track**

Upon the filing of a Defence and allocation to track we can give a schedule of the likely fees and charges that will be involved in progressing your claim through to final Trial.

Legal costs can be recovered in Fast Track and Multi Track claims and it is usual for the loser to pay the winner's fees and charges. However, the fees and charges need to be proportionate, taking into account the value and the complexity of the claim. If fees and charges are disproportionate then some of the fees and charges may be disallowed.

## **GENERAL NOTES**

### **STAY FOR SETTLEMENT/MEDIATION**

Upon the filing of a Defence, an Allocation Questionnaire needs to be filed and the court will then usually stay the matter for one month whilst the parties attempt to negotiate settlement. The parties must consider mediation, failure to do so may result in cost sanctions.

It should be noted that very few defended claims end up at Trial and it is normal for the parties to reach agreement prior to Trial either through negotiation or, in some cases, by way of mediation/alternative dispute resolution or because of the Defendant's failure to comply with directions results in Judgment being given without a trial.

### **DISCLOSURE OF DOCUMENTS**

You have duty to disclose all documents and letters that you hold relating to the dispute, save for privileged documents i.e. letters passing between ourselves. You have a duty to search for any such letters and documents that are or may have been in your possession including documents/letters that may be saved or archived on your computer systems. If you fail to disclose any document or letter that is relevant to the case then you could be held to be in contempt of court and suffer sanctions.

### **WITNESS STATEMENTS**

Witness statements set out the evidence of your witnesses and usually you should not include any hearsay evidence. The evidence should be normally from first hand knowledge. Witness statements need to be signed and dated and will be prepared by us after taking a proof of evidence from your witnesses. If a witness gives any false evidence in the statement then they can be held to be in contempt of court and suffer sanctions.

### **PART 36**

Part 36 of the Civil Procedure Rules allow parties to make an offer to settle. If you are the Claimant then in a defended action, if you make an offer to settle for a lesser sum and the matter proceeds to trial and the Defendant fails to “beat” the offer you made earlier, then there are advantages to you in having made the Part 36 offer in that the Defendant may be ordered to pay higher interest and costs on an indemnity basis i.e. your full legal costs.

If in a defended action, the Defendant makes a Part 36 offer and you do not accept it, then there can be penalties made against you if the matter proceeds to trial and you are awarded by the court a sum less than the Part 36 offer made by the Defendant. In such circumstances, although the court would award you costs up to the date of the Part 36 offer, you would be likely to be found liable for the Defendant’s costs from the date of the offer up to and including the trial. It is worth noting that the greater legal costs are incurred actually at the trial.

## **Forfeiture of Residential Lease/Mortgage Possessions**

We can act for Management Companies and Management Agents in the recovery of ground rent and service charges.

A Landlord can no longer claim forfeiture of a lease for any ground rent or service charges amounting to less than £350. This figure excludes any charges or fees, which the Landlord may wish to add but which do not form part of the amount stated in the lease. Landlords must also formally demand rent rather than sit back and wait for arrears to accrue.

As to breaches of the lease the Landlord cannot serve a Notice threatening to forfeit a lease due to alleged breaches unless either the leaseholder has admitted a breach or a Leasehold Value Tribunal/a court in any proceedings has decided so.

In the case of rent and service charge arrears we advise that initially the managing company or managing agents instruct us to issue court proceedings for the recovery of the rent arrears and costs just like any other unpaid debt. For details of our service/fees and charges please see pages 7 -9.

If after obtaining Judgment the debt is not paid the management company or managing agents have the option of taking enforcement steps or quite often writing to the mortgage company threatening forfeiture will result in the Judgment being paid by the mortgage company to avoid action for the lease to be forfeited and therefore affecting the mortgage company's security.

### **Fees and Charges**

Fees and charges for obtaining a Judgment in respect of the ground rent and service charges are set out on pages 7 -9. For Forfeiture action we will give a schedule of the fees and costs that would be involved in any particular matter.

### **Mortgage Repossession**

We are happy to act for charge holders in possession proceedings, where a possession order and money Judgment can be sought if there are arrears under the mortgage.

A claim form is issued for possession and money Judgment and a Possession Hearing is set by the Court. At the Hearing a Possession Order is usually granted although the Courts do have the power to suspend the Order upon payment. The Defendant(s) would have to at least pay the current contractual monthly instalment together with a sum to clear the mortgage arrears within a reasonable time.

If a Mortgage Possession Order is granted and the Defendant(s) fails to pay in accordance with any suspended Order then a warrant for possession can be issued.

**Fees and Charges**

We are happy to give a schedule as to the fees and charges that would be involved in a mortgage repossession action.

## **Rent Arrears/Forfeiture for Commercial Premises**

If you are a commercial Landlord and are owed rent arrears then using the common law right to distrain for rent we can issue a warrant to distrain to commercial Bailiffs without court proceedings.

Should the process of distress for rent fail, then commercial Bailiffs can proceed with forfeiture and recover possession of your premises from the tenants.

If your tenants have already left the premises and there are no goods upon which you can distrain then normal debt recovery action can be taken as set out on pages 7 – 9.

### **Fees and Charges**

We are happy to give a schedule as to the fees and charges that would be involved in recovering rent/forfeiture of Commercial premises.

## **RESPONSIBILITY FOR THE WORK**

Tim Wheeler a consultant with Davis Gregory Ltd and a Fellow of the Institute of Legal Executives will have day to day responsibility for your matter(s). The work will be carried out by Tim, with help from Deb Larcombe and Sarah Bruton his legal assistants, and other colleagues as necessary. If Tim is unavailable Deb or Sarah may be able to deal with your queries and will be pleased to take a message for you.

We aim to offer all clients a friendly and efficient service. If however there is anything about which you are unhappy, do please let Tim Wheeler know. If there is anything which you cannot resolve with Tim Wheeler please contact Tim Howarth who is the director responsible for client satisfaction and has overall responsibility for the Civil Litigation Department.

## **DAVIS GREGORY'S TERMS AND CONDITIONS OF BUSINESS**

The Solicitors Regulation Authority requires us to inform clients about our terms of business and on the next three pages you will find a formal statement indicating how we carry out professional services on clients' behalf.

You will note from this brochure, that we have fixed our charges for residential possession claims under a tenancy, in standard undefended debt recovery claims and have also fixed our charges for all enforcement actions, for defended claims in the Small Track (namely defended claims that are less than £5,000 in value).

It is not possible to fix our charges in Fast Track defended claims (claims over £5,000 and less than £25,000), Multi Track defended claims (claims over £25,000), forfeiture of residential leases, or mortgage possession claims or recovery of rent arrears/forfeiture action of commercial premises. However, as stated earlier in the brochure, we will be able to let you have a schedule of the likely legal charges and fees that will be involved in dealing with any such actions.

The hourly rates referred to in our Terms and Conditions of Business do not therefore apply to any of the work that is covered by fixed charges in this brochure although, would apply to actions where fees are not fixed although schedule of costs will be provided.

## DAVIS GREGORY LIMITED

### TERMS AND CONDITIONS OF BUSINESS - ALL DEPARTMENTS

The Solicitors' Regulation Authority (SRA) (which lays down professional rules for solicitors and which regulates us) requires us to inform clients about our terms of business. This formal statement indicates how we will carry out professional services on your behalf.

#### 1. PLACE AND HOURS OF BUSINESS

Our office is at 25 Rodney Road, Cheltenham. This is also our registered office. The normal hours of opening are between 9am and 5pm on weekdays. We can arrange appointments outside those hours when necessary.

#### 2. RESPONSIBILITY FOR WORK

You should receive with this document a letter confirming whom to contact about your matter, and what to do if you have a complaint. If there is no such letter, please ask for it.

#### 3. PROFESSIONAL INDEMNITY

In your interest, we maintain insurance to protect you in the very unlikely event of our negligence, to a limit in each case of £5 million. By accepting these terms of business, you agree with us to limit any claim you may have against us to £5 million. If you believe this limit may be insufficient, please discuss it with us as soon as possible.

#### 4. FEES

4.1 Unless and until an alternative fee arrangement (eg a fixed or conditional fee agreement) has been agreed and confirmed in writing by us, the basis for calculation of our fees is as described below. It is mainly by reference to the time spent by the lawyer and staff in dealing with the matter. We record all time spent on your affairs, including attendances upon you and others, any time spent travelling, considering, preparing and working on papers and correspondence (including emails), making and receiving telephone calls.

4.2 We charge the time of legal staff at an hourly rate which reflects overhead costs. We charge routine letters and emails at six minutes a page, telephone calls in six minute units and consideration of letters received at three minutes per page. We reserve the right to charge for photocopying and faxes.

4.3 Current normal hourly rate for Tim Wheeler, consultant with Davis Gregory Limited and a legal executive is £175 per hour, and for legal assistants £100 per hour. These rates will apply unless we agree otherwise in writing and subject to 4.4, 4.5 and 4.6 below. The rates do not include VAT which we have to add when preparing our invoices.

4.4 When we need to work outside normal office hours, we reserve the right to increase the level of the hourly rate.

4.5 We review hourly rates periodically. This takes account of changes in salary and other overhead costs. We will supply details of rate changes occurring during the continuance of a case or transaction to you on request. The normal rate may not be appropriate in cases of complexity or urgency: where it becomes apparent that such circumstances exist, we reserve the right to substitute a revised rate or to terminate the retainer.

4.6 If you are making a claim due to a road accident to which the fixed predictable costs scheme applies (Civil Procedure Rules 1998, Parts 45.7 to 45.14), then if the costs recoverable from the other party under this scheme are higher than our costs calculated on the hourly basis, we shall charge you the higher amount.

4.7 Expenses ("disbursements") include payments we make on your behalf for such items as court fees, counsel's fees, fees for medical reports, search fees, Land or Probate Registry fees etc. We have no obligation to make such payments unless you have provided us with

funds for that purpose, or we have made another arrangement with you in writing. VAT is payable on certain disbursements.

- 4.8 Unless otherwise agreed in writing, our fees are payable by you whether or not we conclude a case successfully or complete a transaction. If any case or transaction does not proceed to completion for any reason during the period in which you instruct us, then we shall charge for work done on a basis set out above, unless at our discretion, we waive part or all of such entitlement to fees.

## 5. ARRANGEMENTS FOR PAYMENT OF FEES

- 5.1 **Property transactions:** we will normally render an account following the exchange of contracts: payment is due prior to or upon completion. Where sufficient funds are payable to you upon completion, we will deduct amounts due unless otherwise agreed.

- 5.2 **Administration of estates** we usually deliver interim accounts at intervals during the administration. We will normally deliver the first interim bill when we apply for the grant of probate (or letters of administration). If we then think it will take some time to complete the administration, further interim accounts will be rendered periodically. We will present our final account when we deliver the estate accounts for approval.

- 5.3 **Other cases or transactions:** we reserve the right to ask clients to pay sums of money from time to time on account of fees and disbursements. Please meet such requests with prompt payment. In transactions or cases likely to continue for some time, we may render quarterly interim accounts covering the work already carried out. In some cases, accounts may be more frequent, e.g. when a considerable amount of time is spent within a short period. In the event of any such account, or request for payment on account, not being met, we reserve the right to decline to act further in your case. The full amount of work done up to that date will then be the subject of a final account rendered and will be a debt due from you.

- 5.4 Interest is charged on invoices that remain unpaid one month after presentation at the rate for the time being payable on judgment debts in accordance with article 5 of the Solicitors' (Non-Contentious Business) Remuneration Order 2009.

- 5.5 In cases or transactions continuing for some period of time, many clients find it convenient to arrange regular payments on account by way of standing order. Please tell the person having conduct of your matter if you wish to pay in this way, so that we can give you the relevant bank account details.

- 5.6 There are special arrangements for matters dealt with under conditional fee or legal expenses insurance arrangements.

## 6. COSTS RECOVERED

- 6.1 In some litigation cases a successful client may be entitled to the payment of costs by another party to the proceedings. If yours is such a case, and you are unsuccessful, you may have to pay the other party's costs. A system of assessment of costs then usually comes into play. However, it is rare for assessment to result in the other party having to pay the full amount of the costs incurred by the client with their own solicitor. Further, the other party may not have the means to pay them. In addition, if the other party has legal aid, you are unlikely to recover costs, even if you have won the case. In family cases it is unusual for one party to pay the other's costs.

- 6.2 If you are successful and costs fall to be paid by the other party, you can in some circumstances claim interest on those costs against the other party as from the date of the order for costs. To the extent that you have paid any of our fees and disbursements on account, we shall repay such interest: otherwise we are entitled to retain it.

## **7. INTEREST PAYMENTS AND CLIENT ACCOUNTS**

- 7.1 If we hold money on your behalf, subject to the terms of this paragraph, we will credit you with interest in accordance with the Solicitors' Accounts Rules 1998, provided the amount of interest due is at least £20. Subject to certain minimum amounts and periods of time prescribed by the rules, we calculate interest at the rate from time to time payable on Lloyds TSB Bank plc's clients' call accounts. The period for which interest will be credited will normally run from the date on which we receive funds until the date we issue our cheque to you or credit the interest against other costs or expenses, as appropriate.
- 7.2 If you are borrowing money from a lender, we shall request the lender to arrange that the advance cheque is received by us a minimum of four working days prior to the completion date to ensure that cleared funds are available in time for completion. You should note that the lender may charge interest from the date of issue of the cheque.
- 7.3 We will take proper care of any money we may hold for you, but will not be liable for any loss caused by a failure of a bank. This does not affect any right you may have to claim against the bank or the Financial Services Compensation Scheme. You hereby consent to our disclosing your details to the FSCS so they can assess what compensation may be due to you. Further information is given in a sheet about money held in our client accounts which is available upon request.

## **8. INSURANCE                      MEDIATION/FINANCIAL                      SERVICES/COMMISSION PAYMENTS/REPORTING**

- 8.1 We are not authorised by the Financial Services Authority (FSA). However we are included on the Register maintained by the FSA so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the SRA. The Register can be accessed via the FSA website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register). The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The SRA is the independent regulatory body of the Law Society and the Legal Complaints Service (LCS) is the independent complaints handling body of the Law Society. If you have any problem with the service we provide for you then please let us know. We will try to resolve any problem quickly and we operate an internal complaints handling system. If we are unable to resolve the problem between us, the SRA and the LCS provide complaints and redress mechanisms.
- 8.2 If we receive commission from a financial institution, broker or others (and unless otherwise agreed) we shall account to you for that part of the commission, if any, as may exceed the amount of any fees or disbursements due to us from you.
- 8.3 We are professionally and legally obliged to keep your affairs confidential. However, solicitors may be required by Statute to make a disclosure to the Serious Organised Crime Agency where they know or suspect that a transaction may involve money laundering or terrorist financing. If we make a disclosure in relation to your matter, we may not be able to tell you that a disclosure has been made. We may have to stop work on the matter for a period of time and may not be able to tell you why.

## **9. STORAGE OF PAPERS AND DEEDS**

- 9.1 Following the conclusion of a transaction or case on your behalf, we shall retain your file of papers for such a period of time that we shall deem appropriate in our discretion. If you require us to keep such papers (including pre-registration deeds and documents where the title to property has been registered at H.M. Land Registry) for any specific period, you must give notice in writing to us to that effect. In the event of your giving us such notice, we reserve the right to require you to take personal custody of the papers. This provision does not apply to current deeds, wills and securities.

9.2 We provide a safe custody service to clients in respect of wills, deeds and other securities and we make no charge for such storage unless we give you prior notice in writing.

9.3 Where we retrieve stored papers, wills, deeds or securities from storage, in connection with continuing or new instructions to us to act in a matter, we normally make no charge. However, we reserve the right to make an administration charge based on the time spent in retrieval and perusal, correspondence or other work necessary in order to comply with your instructions.

**10. FUTURE INSTRUCTIONS**

Unless otherwise agreed, and subject to the application of then current charges, these terms and conditions of business shall apply to any future instructions given to us by you. They form the basis of a binding contract between you and us. This means that your right to challenge any of the terms will be restricted, and the charging basis will be fixed by reference to these. Please check, therefore, that you have read them through carefully. Although your continuing instructions in this matter will amount to an acceptance of these terms and conditions of business, it will be helpful if you will please sign and return one copy of them for us to retain on our file.

**I have read, understood and accept the terms and conditions of business set out above.**

signed .....

date .....

06/09

[matter.feeearnerref]/[\*matter.entityref]- [matter.number]