

Landlord's essential guide
to tenant insolvency,
according to Dutch law.



1. Termination of the lease agreement
2. Executory debts
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1. Termination of the lease agreement

- A. In the event of bankruptcy (faillissement) of the tenant, a trustee will be appointed by the court.

Please consider that:

- Both the trustee and the landlord shall be entitled to terminate (beeindigen) the lease agreement pursuant to article 39 of the Dutch Bankruptcy Code (DBC) (Faillissementswet), by serving written notice.
- A notice period of at least three months applies for both the landlord and the trustee.
- Alternatively, if the lease agreement stipulates that insolvency of the tenant is grounds to dissolve (ontbinden) the lease agreement or if the tenant is in serious default, the landlord has the right to dissolve the lease agreement, by seeking a court's decision to dissolve the lease, unless the tenant agrees to the dissolution.
- In general lease agreements shall be terminated pursuant to article 39 DBC due to the fact that a decision of the court takes more than three months.

- B. In the event of a moratorium of payment (surseance van betaling) granted to the tenant, a receiver will be appointed by the court.

Please consider that:

- Only the tenant, acting in cooperation with the receiver, has the right to terminate the lease agreement before the end of the lease term, pursuant to article 238 DBC.
- A notice period of at least three months applies.
- The landlord has the right to dissolve the lease agreement if the lease agreement stipulates that a moratorium of payment is grounds to dissolve the lease agreement or if the tenant is in serious default.

2. Executory debts

A. Rent

Dutch bankruptcy law distinguishes two kinds of debts: executory debts and claims that can be served to the trustee for validation. Executory debts are ranked higher than claims that can be served to the trustee for validation.

- From the date of bankruptcy or moratorium of payment, rent payments due in connection with the period after the date of the bankruptcy or moratorium of payment are executory debt.
- Claims for unpaid rent relating to the period prior to the date of bankruptcy or moratorium of payment, can be served to the trustee/receiver for validation.

B. Delivery of the leased premises

- If according to the lease agreement, the landlord and the tenant have agreed that the leased space shall be delivered in the state as it was at the commencement date, the trustee/receiver must remove the alterations made by the tenant in the meantime. If the trustee/receiver fails to perform this obligation, the landlord can claim for costs of removal and reinstatement. This claim can be served to the trustee/receiver for validation.

3. Bankruptcy and compensation

- In the event of termination of the lease agreement by either the landlord or by the trustee, the landlord shall not be entitled to compensation from the bankruptcy estate of damages in the form of the rent that would have been due and payable if the lease agreement had not been terminated prematurely (except for the rent during the notice period).

4. Securities and bankruptcy

Bank guarantee, deposit, parent guarantee

- It is common practice, although not mandatory, that tenants provide a bank guarantee, deposit or a parent guarantee as security for the performance of its obligations under a lease agreement. From the date of bankruptcy or moratorium of payment, the landlord is entitled to invoke the bank guarantee, deposit or the parent guarantee up to the maximum amount of the respective security.
- Please be informed that bank guarantees that have been issued after the year 2018 exclude the option of the landlord to invoke the bank guarantee for claims for damages for loss of rent (leegstandschade) and that landlords are also not entitled to invoke deposits for such claims.
- In the event that the parent guarantee provides for this, it is legally permissible to claim from the parent the rent that would have been due and payable if the lease agreement had not been terminated prematurely.

5. Factors to consider in the event of tenant insolvencies

- Consider whether it is better to continue or to terminate the lease agreement.
- In case the landlord wishes to terminate the lease agreement, provide the termination by registered mail to the trustee demanding eviction of the leased space. Please note that if the trustee asks for a so called cooling-off period, the tenant cannot be evicted during two months (which period can be extended by another two months by the court).
- In the event of dissolution of the lease agreement, it is advisable to ask the court to dissolve the lease agreement and to provide an eviction order.
- If a bank guarantee has been issued as a security for the tenant's obligations, it is advisable to postpone executing such bank guarantee until the lease agreement has been terminated and the premises has been evicted ensuring that the guarantee covers possible reinstatement costs. In addition, it is advisable to use the bank guarantee for claims that can be served to the trustee for validation first and later for executory debts.

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Lease Team, April 2020

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