



# Landlord and Tenant (Covenants) Act 1995

## 1995 CHAPTER 30

### *Liability of former tenant etc. in respect of covenants*

#### **16 Tenant guaranteeing performance of covenant by assignee.**

- (1) Where on an assignment a tenant is to any extent released from a tenant covenant of a tenancy by virtue of this Act (“the relevant covenant”), nothing in this Act (and in particular section 25) shall preclude him from entering into an authorised guarantee agreement with respect to the performance of that covenant by the assignee.
- (2) For the purposes of this section an agreement is an authorised guarantee agreement if—
  - (a) under it the tenant guarantees the performance of the relevant covenant to any extent by the assignee; and
  - (b) it is entered into in the circumstances set out in subsection (3); and
  - (c) its provisions conform with subsections (4) and (5).
- (3) Those circumstances are as follows—
  - (a) by virtue of a covenant against assignment (whether absolute or qualified) the assignment cannot be effected without the consent of the landlord under the tenancy or some other person;
  - (b) any such consent is given subject to a condition (lawfully imposed) that the tenant is to enter into an agreement guaranteeing the performance of the covenant by the assignee; and
  - (c) the agreement is entered into by the tenant in pursuance of that condition.
- (4) An agreement is not an authorised guarantee agreement to the extent that it purports—
  - (a) to impose on the tenant any requirement to guarantee in any way the performance of the relevant covenant by any person other than the assignee; or
  - (b) to impose on the tenant any liability, restriction or other requirement (of whatever nature) in relation to any time after the assignee is released from that covenant by virtue of this Act.

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*Changes to legislation: Landlord and Tenant (Covenants) Act 1995, Section 16 is up to date with all changes known to be in force on or before 21 February 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (5) Subject to subsection (4), an authorised guarantee agreement may—
- (a) impose on the tenant any liability as sole or principal debtor in respect of any obligation owed by the assignee under the relevant covenant;
  - (b) impose on the tenant liabilities as guarantor in respect of the assignee's performance of that covenant which are no more onerous than those to which he would be subject in the event of his being liable as sole or principal debtor in respect of any obligation owed by the assignee under that covenant;
  - (c) require the tenant, in the event of the tenancy assigned by him being disclaimed, to enter into a new tenancy of the premises comprised in the assignment—
    - (i) whose term expires not later than the term of the tenancy assigned by the tenant, and
    - (ii) whose tenant covenants are no more onerous than those of that tenancy;
  - (d) make provision incidental or supplementary to any provision made by virtue of any of paragraphs (a) to (c).
- (6) Where a person ("the former tenant") is to any extent released from a covenant of a tenancy by virtue of section 11(2) as from an assignment and the assignor under the assignment enters into an authorised guarantee agreement with the landlord with respect to the performance of that covenant by the assignee under the assignment—
- (a) the landlord may require the former tenant to enter into an agreement under which he guarantees, on terms corresponding to those of that authorised guarantee agreement, the performance of that covenant by the assignee under the assignment; and
  - (b) if its provisions conform with subsections (4) and (5), any such agreement shall be an authorised guarantee agreement for the purposes of this section; and
  - (c) in the application of this section in relation to any such agreement—
    - (i) subsections (2)(b) and (c) and (3) shall be omitted, and
    - (ii) any reference to the tenant or to the assignee shall be read as a reference to the former tenant or to the assignee under the assignment.
- (7) For the purposes of subsection (1) it is immaterial that—
- (a) the tenant has already made an authorised guarantee agreement in respect of a previous assignment by him of the tenancy referred to in that subsection, it having been subsequently re-vested in him following a disclaimer on behalf of the previous assignee, or
  - (b) the tenancy referred to in that subsection is a new tenancy entered into by the tenant in pursuance of an authorised guarantee agreement;
- and in any such case subsections (2) to (5) shall apply accordingly.
- (8) It is hereby declared that the rules of law relating to guarantees (and in particular those relating to the release of sureties) are, subject to its terms, applicable in relation to any authorised guarantee agreement as in relation to any other guarantee agreement.

**Changes to legislation:**

Landlord and Tenant (Covenants) Act 1995, Section 16 is up to date with all changes known to be in force on or before 21 February 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act excluded by [2016 anaw 1 s. 72\(3\)](#)