

# Commercial Leases

Before taking on a lease, whether it is a new lease or one that you are taking over, there are a number of things you should consider:

## How many years?

The number of years that the lease will run is known as the 'term'. This is the length of time you will be contractually committed to paying the rent, regardless of how well or badly your business is doing. You must consider if you want to be tied into such a financial commitment for a number of years. On the other hand, when you are building a business you need to know that you will not have to move just as the business is becoming established. A longer term with options to end the lease after a certain time may help to balance these two considerations.

## Should a tenant's legal protection be signed away?

At the end of the term stated in a commercial lease, it will automatically continue unless either the landlord or the tenant requests a new lease to be put in place. Tenants usually have the legal right to a new lease that is similar to the previous lease and at a reasonable rent. A lease will not be renewed if the landlord can prove certain circumstances exist but the landlord must pay compensation to the tenant. This is known as security of tenure. However, this legal right can be excluded by agreement before the lease is completed and more and more landlords are asking for such an agreement from prospective tenants. You should consider your circumstances very carefully before agreeing to exclude your legal rights as you may find that you have to leave the property from which your business is operating successfully without any compensation to help you with the cost of relocation and the disruption to your business.

## What are you allowed to do?

A lease will say what you can and cannot do in the property. If you do anything that is not permitted by the lease or if you do not comply with obligations within the lease, you will be in breach of it and the landlord could sue you or end the lease early. It is essential that you consider carefully whether or not your

business falls within the permitted activities and that you can operate it effectively. You should also ensure that this part of the lease is flexible so that you are not prevented from diversifying your business in the future.

## What do you repair?

Most leases impose some form of obligation on the tenant to repair the property. You should consider carefully what level of repair is expected of you and the current state of the property. Tenants find themselves faced with repair bills running into tens of thousands of pounds when they have unwittingly accepted obligations to carry out major repairs to a run down property (see our separate leaflet on this point).

## Can you alter the property?

You should consider ensuring that you have a right to alter the property from time to time to ensure it continues to be suitable for the needs of your business.

## Can a tenant get out of the lease before the end of the term?

You should consider the future when taking on a lease to ensure that you have flexibility to take into account changes in the business and your requirements. If over time the property becomes unsuitable because it is no longer the right size, does not provide the facilities you require or is no longer cost effective, you need to be able to take action to ensure the survival of your business. The lease should therefore provide for the following:

## Transfer of the lease to a new tenant

This will pass the obligation to pay the rent to someone else allowing you to find an alternative, more suitable property. Continued over...



### Subletting

You will remain primarily responsible for paying the rent but the sub-tenant will pay rent to you which should help with cash flow.

### A break clause

You will then be able to notify the landlord that you want to end the lease. However, if you do not notify the landlord properly you can invalidate the break clause and be left with the lease and the obligation to pay the rent.

If the above are not available you can ask to surrender the lease. The landlord may accept this on payment of a lump sum. This may be preferable to paying the rent over a long period of time.

### What happens at the end?

On or before the last day of the lease, whether it has come to the end of the term or ended due to a break clause or surrender, you must leave the property and remove all of your possessions. If you remain in the property you may be liable to pay double the rent you were paying under the lease. You must also ensure you have carried out any repairs for which you are responsible and removed any alterations that you have made. If you do not the landlord could sue you for the cost of doing that work.

**You should always seek advice on your individual circumstances; this leaflet is for information only, and does not constitute advice.**

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