

CLIENT GUIDE TO LEASES

You have asked us to act for you in connection with the grant of a new Lease or the assignment (purchase) of an existing Lease.

The purpose of this guide is to advise you of various important legal aspects connected with Leases. In the guide we will draw your attention to a number of matters to which you should give consideration but by its very nature we cannot deal with each and every aspect of the Lease in this brief guide. You must therefore carefully read the lease and advise us of any particular aspects which require further clarification or in respect of which you are particularly concerned.

Our governing body which is The Law Society have endorsed a Code of Practice relating to commercial Leases and which is designed to be helpful to business landlords and tenants. We would recommend that you look at the Code of Practice which can be found at www.lettingbusinesspremises.co.uk and that you carefully read the Code as soon as possible and certainly prior to finalising negotiations with the prospective Landlord. All the terms in a commercial Lease are negotiable and potentially flexible. Therefore, we recommend that you consult a property advisor such as a member of the Royal Institution of Chartered Surveyors or the Incorporated Society of Valuers and Auctioneers as early as possible in your negotiations in order to establish the likely competition for the premises that you are considering renting, that you understand the landlords objectives and that you ensure that the terms that are being negotiated reflect current market conditions. The relationship between you and your prospective Landlord will continue after the Lease has been signed and therefore you should have a genuine dialogue in negotiating in an open and honest way the proposed terms of the Lease.

If you are the Landlord and have a mortgage on the property you are letting you will need the consent of your lender to the proposed lease. You will also need to obtain an Energy Performance Certificate prior to letting the property.

We strongly advise you not to undertake any work to the premises you intend to lease until completion of the lease since if you do so and either you or your prospective landlord decides not to proceed with the lease you may find it very difficult to recover any of the costs you have incurred.

We will deal with the various aspects under the following headings.

1. The Term (length) of the Lease.

By signing a new Lease or taking an assignment of an existing one you are agreeing with the Landlord that you will pay the rent and comply with all the tenants obligations set out in the Lease for the whole of the term or the remainder of it as the case may be. If you subsequently sell the Lease then you may be released from those obligations subject as explained later in these notes but you may have great difficulty in finding someone to take over the Lease from you if it has a long time left to run or if the tenant's covenants are onerous. In negotiating the term of a new Lease with the Landlord you should bear in mind your own future plans to ensure that any term granted is adequate for your purposes. The grant of a new lease of over seven years or the sale of an existing lease with over seven years left to run requires to be registered at the Land Registry and there is a fee payable for registration. The longer the term the more likely it is that you will pay Stamp Duty Land Tax. If at the end of the term you stay in the premises (hold over) you will need to submit a further Stamp Duty Land Tax return and may be liable to pay further tax as a result.

2. Guarantee

If a company is a Tenant of a Lease then the director of that company which may include you, may be required to personally guarantee the obligations of the company for the term of the Lease. If your business failed or if you moved out of the premises then you would have to pay the rent and comply with the other obligations of the Lease which you would therefore have to do from your personal resources.

3. Break Clauses

Some Leases contain a clause which gives the Landlord or Tenant or both the right to end the Lease earlier than the end of its term. Such clauses usually involve a specific strict timetable and require the person wishing to break the Lease to serve a notice on the other. If you have paid Stamp Duty Land Tax and later break the lease you will not be entitled to any refund and therefore it may be preferable to negotiate a shorter lease with an option to renew the lease as this may avoid the tax and Land Registry fees. If a lease is renewed a further Stamp Duty Land Tax return will be required and additional tax may be payable.

4. Assignment or sub-letting of the whole or part of the premises.

We will check the Lease for you and advise you whether it allows you to assign (sell) the Lease to someone else or sub-let the whole or part of the premises.

If the Lease has been granted since 1 January 1996 it will be subject to rules which entitle the Landlord to insist that before assigning the Lease you enter into a formal agreement guaranteeing that the proposed assignee will pay the rent and comply with the other obligations. If therefore the person to whom you transfer the Lease fails to do so then you will still be liable. Your liability will only come to an end when that person in turn assigns the Lease to somebody new.

If the Lease was granted before 31 December 1995 then it will not be subject to these rules and normally you would be liable to pay the rent and comply with all the tenant's obligations for the whole of the term of the Lease irrespective of any assignment if any future tenant under that particular Lease fails to pay the rent or comply with the covenants. It may be possible to insure against this risk and we suggest that you contact an insurance broker to enquire as to whether that will be practical

Some Leases prohibit assignments completely. You should think very carefully before accepting such a Lease as the obligations will remain throughout its entire term.

When you come to assign the lease you are likely to be asked to pay your Landlords solicitors fees for dealing with the assignment.

5. Rent

The rent in the Lease will be payable at an agreed figure and it is normally payable three months in advance. The rent will need to be paid regardless of your trading circumstances. Failure to pay the rent, or the other charges stated in the Lease, on the agreed time may result in the Landlord seeking to recover the debt from you and forfeit i.e. take away the Lease.

You should carefully consider the amount of rent rates, service charges and other outgoings that are payable under the Lease and ensure that you will be able to meet them. When agreeing the rent and the payment of any “ingoing” capital sums you should consider instructing a Surveyor to advise whether the payments are reasonable. Stamp Duty Land Tax (SDLT) may be payable if the rent during the term exceeds £150,000.00 approx. An SDLT return must be completed within thirty days of the “effective date” even if no SDLT is actually payable. The effective date is usually the completion date but it can also be the date that the transaction is substantially performed e.g. by the tenant going into possession, or paying rent, or a premium even prior to the completion date. Therefore, if you go into possession or make a payment prior to the completion date please let us know immediately so that we can submit the return and avoid any penalty being charged.

A Landlord may be able to charge VAT on the rent and costs incurred by him thereby increasing the amount payable by the rate of VAT.

6. Rent Review

The rent is likely to be reviewed periodically; in which case you must ensure that you understand and agree the basis upon which the rent will be changed and the procedure to be followed. Any new rent is likely to be the letting value of the property in the open market with vacant possession at the date of the review. This sum is usually arrived at by looking at recent open market lettings of similar properties in the area let on similar terms. Some Leases contain ‘Upward Only’ review clauses. The effect of such a clause will be that the rent when reviewed will never fall below the rent already being paid regardless of the current market rental value of the premises. You should seek to negotiate with the Landlord a review clause allowing the rent to fall as well as rise as early as possible in your negotiations. If the rent is reviewed a further Stamp Duty Land Tax return may need to be submitted to the H M Revenue and Customs and further tax paid and you may wish to consult us at that time to negotiate any rent review and then deal with the tax implications.

7. Repairs and Insurance and Service Charges

The Lease will set out the extent of your obligations to carry out repairs to the property. You should bear in mind that an obligation to keep the property in repair includes automatically an obligation to carry out any repairs which are required at the outset even if that means that you would have to leave the property in a better condition at the end of the Lease than you found it at the start. You should therefore instruct a Surveyor to inspect the property and advise you on its condition and any repairs which are required initially or may be needed during the term of the Lease. If these are extensive then it may be possible to limit your liability by negotiation with the Landlord and by amending the Lease accordingly. If your obligations are limited so that you are not required to keep the property in any better state of repair than it is at the outset then you will need to have evidence of its condition in the form of a schedule prepared by the Surveyor and/or agreed photographs.

When inspecting the property the Surveyor should include in his report comments on the services and you will be able to consider any recommendations which he may make.

You will almost certainly be liable to keep in repair and in full working order all the fixtures fittings and equipment which are part of the property and which are included in the Lease to you.

Most leases require the tenant to comply with any Acts of Parliament which govern properties. For example, The Disability Discrimination Act 1995 and 2005 makes it mandatory for many buildings to be made more accessible to those with disabilities. The range of works required will vary but could include the installation of a ramp or lift, widening of doors, improved toilet facilities etc. The cost of that work is likely therefore to fall on the tenant and you should consider that when negotiating terms with the Landlord or the present tenant from whom you are acquiring an existing lease. We recommend that you arrange for a specialist discrimination audit / survey prior to completing the lease. The Control of Asbestos at Work Regulations 2002 place a duty on a tenant to manage the risk from asbestos in non-domestic premises and to ensure that an assessment is carried out to see if asbestos is present in the premises. We strongly recommend that you have a thorough survey/ risk assessment carried out before you complete the lease and prior to carrying out any work to the premises since the cost of complying with these regulations could be huge. You may seek an indemnity against such costs from your landlord as part of your negotiations before completing the lease. The Health and Safety Executive publish helpful leaflets on managing asbestos which can be found on their website at www.hse.gov.uk.

You should receive an energy efficiency certificate when taking a new lease or having a lease assigned to you and you should seek your surveyors advice on the cost of any improvements highlighted in the certificate prior to completing the transaction.

All commercial premises must have a fire safety risk assessment carried out and again you should ask to see a copy of the audit to show us and your surveyor as it may involve you in expense to comply with the recommendations and unless you do so the landlord's insurance of the building would be adversely affected. You may also wish to contact Dorset Fire and Rescue Services fire safety department for further information prior to committing yourself to taking the lease. Their telephone number is 01305 256000. We would also recommend that you arrange for a qualified fire safety consultant to inspect the premises prior to taking a lease and on an ongoing annual basis in order to ensure continuing compliance with the regulations. Further information can be found on the Dorset Fire and Rescue website at www.dorsetfire.gov.uk and also www.communities.gov.uk/firesafety

If the property which you are proposing to lease is part of a larger building or development then you may have to contribute towards the overall costs of repair maintenance and insurance by way of a service charge.

From 2015, there will be a ban on the use of HCFCs used in many air-conditioning systems. You should therefore ask your surveyor to advise you on what gases are used in the air-conditioning system within the building you propose to rent (if any), and consider re-negotiating the lease or requiring the landlord to replace the system before the lease is completed so that the cost of doing so will not fall on you.

The Lease will set out the insurance requirements. You may need additional insurance to protect your business and income over and above any insurance which may be taken out by the Landlord to cover the property. If the Landlord arranges the building insurance (which is normal) you are likely to have to contribute to those costs.

Where the Landlord insures the property, the Lease usually provides for the payment of rent to cease until the property has been reinstated after damage by an insured risk. Sometimes however the rent will resume after a period of time (e.g. three years)

If the requirements to pay the service charge/insurance etc are described as “rent” in the lease it is possible that Stamp Duty Land Tax will be payable on these elements in addition to the rent.

8. Alterations

Most Leases restrict the tenants right to alter or extend the premises. Structural or external alterations are often absolutely prohibited, whilst non-structural internal ones may be allowed with the Landlords written consent. Even then, it may be possible to apply for a Court Order to carry out alterations, but the Landlord can offer to make them in return for a reasonable rent increase. At the end of the lease you may be entitled to compensation for any improvements you made to the premises which add to the letting value provided that you complied with the statutory requirements before commencing the work. You should therefore consult us before commencing any such work to ensure the statutory requirements are complied with.

9. Use Clause

Most Leases restrict the use to which the property can be put.

You should carefully consider the Use Clause in the Lease to ensure that it meets with your requirements. If it does not then the Landlords consent will be required to amend the Use Clause and it may also require the consent of the Local Planning Authority for a change of use. We advise you to contact the Local Planning Authority prior to signing the lease, to check whether they would agree a change of use. As a Tenant you will want flexibility and if the use clause is too restrictive you may have difficulty in assigning or subletting. However the wider the use clause is the higher the rent is likely to be.

10. Costs

On the grant of a new Lease one of the terms may well be that you will be responsible for the Landlord's costs. If this is the case we will be asked to give an undertaking that those costs will be paid whether or not you do proceed to complete the Lease. We will obtain an estimate of those costs and we will need to ask you to put us in funds to meet them at the outset in order to cover that undertaking.

11. Dispute Resolution

Leases usually provide for any disputes to be decided either by arbitration or by an independent expert rather than by an application to a Court. Awards by arbitrators and determinations by independent experts have some things in common, but in other respects are quite different.

The main points of difference are that arbitrators decide any dispute according to the evidence submitted to them and cannot carry out their own research whereas an expert would do so., and an arbitrator must conduct a hearing at which both parties attend whereas an expert need not hold a meeting. An arbitrator can order either side to pay all or part of the others costs whereas an expert cannot (unless the Lease provides otherwise). An arbitrator may be required to give the reason for his decision whereas an expert will not. Finally, an arbitrators decision is subject to an appeal to the High Court on a point of law whereas an experts is not.

12. Repossession

The Lease will usually contain a clause (called a forfeiture clause) giving the Landlord the right to re-possess (re-enter) the property if the Tenant fails to pay the rent or breaks any of the other obligations. If a Landlord seeks repossession the Tenant (or sub-Tenant) may be entitled to relief from forfeiture i.e. the right to retain the property despite the breach provided the Tenant does make good the breach.

13. Renewal of Lease

Under the Landlord and Tenant Act 1954 Part II, business tenants have a right to claim a new tenancy at an up-to-date rent at the end of the current Lease. A Landlord can oppose such a Lease in certain defined circumstances. If you are asked to Contract out of the provisions of this Act you must be aware that you will lose the automatic right to renew your Lease.

14. General

Please note that if the Lease is in joint names you are all equally liable for the performance of the tenants covenants. You should consider the advantage of the Lease being in only one name (if you are a husband and wife) should your business fail.

At the conclusion of the transaction we will close and store the file. Our file consists of a number of papers some of which belong to you and some belong to us. Generally speaking we store files for approximately six years, after which time they are destroyed. If you wish to recover any papers which you have provided us with during the course of the transaction you should notify us within one month of the final letter you receive from us and we will return them to you. If we do not hear from you, we will assume that you do not wish to have specific items returned to you and we will use our discretion as to what should be retained with our file for storage.

The above does not relate to Title Deeds. Following the implementation of the Land Registration Act 2002 no paper title deeds are now issued for any registered property and the only evidence of ownership is the entries on the Land Registry computer system of which up to date copies can be obtained at any time. This means that in most cases there are few if any deeds which need to be retained in safe storage but there may be some, such as the original Lease, which should be kept safely and these will either be returned to you or at your option lodged in our strongroom (subject to our current terms of storage which are set out below). Even in cases where there is a mortgage few lenders now wish to keep any Deeds and the same information applies.

If we retrieve papers or documents from archive or storage in relation to continuing or new instructions to act for you we will not charge for such retrieval. However we will make a charge based on the time we spend on producing archived scanned or stored documents or papers (or copies of them) to you or to someone at your request. We will also charge for reading correspondence and writing letters or other work necessary to comply with your instructions. The minimum deeds production charge is currently £50 + VAT but is reviewed from time to time. We will not release the deeds until the charge has been paid.

The Solicitor who has written the letter that accompanies this guide will deal with the work personally, but if he is not available his Secretary, who will be familiar with the file, will be able to take a message. She is not however qualified to give legal advice. The Principal responsible for the supervision of the commercial conveyancing department and therefore of this transaction is Mr G P Meakins.

We aim to offer all clients an efficient and satisfactory service and we trust that we shall do so in this case. If however there is any aspect of our service with which you are unhappy, and which you cannot resolve with the solicitor dealing with the matter, you may raise the matter with Mr S Jones, the Principal in the firm with responsibility for dealing with complaints, or with Mr T Guppy if Mr Jones is acting personally for you.

Should the matter fail to proceed to completion, then we will charge for the work done to date.

During the course of any matter we may use e-mail at appropriate times in order to communicate with you. This will include sending documentation.

You may be aware that such communication over the Internet is not completely secure and that viruses may also be spread by such communication. We take reasonable precautions to prevent the spread of such viruses by use of a fire wall and virus checking software. It is assumed that you carry out similar precautions unless you advise us to the contrary.

We do not accept any liability (except in relation to such as cannot be limited by law) for loss, delay, destruction, interception, corruption or contamination arising in connection with any communication sent to you by e-mail.

Please let us know in writing if you have any objection to us communicating with you and other relevant parties by e-mail. We will assume that you do not unless we hear from you to the contrary. If time is crucial we suggest that you telephone us to ensure that we have received any e-mail or fax message.

The law requires solicitors to get satisfactory evidence of the identity of their clients. This is because solicitors who deal with money and property on behalf of their clients can be used by criminals wanting to launder money.

To comply with the law, we need evidence of your identity as soon as possible. Therefore would you please bring with you identification evidence which will ideally be your passport and driver's licence to your first appointment. We will copy the document and return it to you.

If we are acting for you as representative of a company, trust or other body (including a club) we will need to establish the beneficial owner (as defined) of the organisation and we will almost certainly require further evidence of identity in respect of other members of the organisation. We will advise you specifically where this is the case.

We must see satisfactory evidence of identity from clients or report unusual circumstances even in relation to existing clients to the appropriate authorities.

Until we have satisfactory evidence of identity we will not be able to proceed with acting for you.

Under the Proceeds of Crime Act 2002 a criminal offence is committed if you or we become concerned in an arrangement which facilitates the acquisition, retention, use or control of criminal property. Accordingly you must be aware that if we are given any information alerting us to an offence then you and/or us must report the matter to the The National Crime Agency (NCA) and failure to do so is an offence. This can be information about you, your spouse, or indeed any other person. Proceeds of crime are any monies which have arisen as a result of any crime and include, for example, monies saved as a result of tax evasion, cash taken out of a business and

not declared, cash payments for any work not disclosed for the purpose of tax and/or benefit entitlement.

In certain circumstances it may be necessary for us to make a report to NCA before we can continue to act and it may be necessary for us to make such a report without reference to you. Our obligations under the Proceeds of Crime Act 2002 override client confidentiality and privilege. Such a report may lead you to discover that you are the subject of a criminal investigation if any offence appears to have been committed.

We confirm that any fee earner time spent on the matter addressing any issues arising from the Act, will be charged in the same manner as any other work undertaken on your behalf. We are only authorised and able to provide advice on the law in England and Wales.

Any work we do for you may involve tax or duty implications. Unless we inform you in writing to the contrary we will not advise you on such tax or duty matters and you are advised to consult a taxation specialist in this respect.

This guide sets out the terms upon which we are willing to deal with the transaction on your behalf. If you would like us to do this work for you please sign one copy of this guide and return it to us. Upon receipt of it we will regard ourselves as acting on your behalf.

If your instructions to us have not been given to us at a face to face meeting you would generally have the right to cancel those instructions without any cost to you within seven working days of these written instructions being received by us.

You could cancel the agreement by either delivering and posting a note to the office cancelling your instructions or by sending it by fax or email. You may not however cancel the agreement once we have, with your permission, started to do the work on your behalf. By signing and returning this guide you are agreeing that to avoid any delay in the transaction we may start work on your behalf straight away and we do not have to wait for the cancellation period to expire.

You may terminate your instructions to us in writing at any time but we will be entitled to keep all papers and documents while there is money owing to us. We will decide to stop acting for you only with good reason and on given you reasonable notice. If you or we decide that we will stop acting for you, you will pay our charges on an hourly basis. Our presently hourly charge is £215.00 per hour plus VAT.

Please do not hesitate to contact us to discuss any points which arise from these notes or the accompanying letter, or throughout the transaction, should you have any queries.

The firms normal hours of opening are between 9.am - 5.pm Monday to Friday.

Please sign date and return the duplicate copy of this guide to confirm that you have read and understood the contents and that we may act on your instructions (or either one of you if applicable).

Signed

Please Print NameDated.....

Signed

Please Print NameDated.....

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