

What to look out for in a commercial lease

Taking on a lease of a commercial premises can be a nerve racking and confusing process for any start-up business. There are many aspects to consider when drafting the key terms of a new lease and numerous traps for the unwary.

Our commercial property team has put together this guide to highlight some of the key issues:

Heads of terms

Clear heads of terms are always to be welcomed. They should set out the key points agreed between the parties for the proposed letting eg extent of property to be let, rent, rent reviews etc. We recommend that you always speak with your solicitor before agreeing heads of terms so that he can give guidance on any particular issues of importance to you, eg service charges, car parking rights, rights of access in case of emergency, etc.

Registration

Any lease of more than 7 years must be registered, as must a transfer of an unregistered lease where the unexpired term exceeds 7 years. It is important to ensure that the lease plan is Land Registry compliant so that the lease can be correctly registered at the Land Registry as soon as possible following completion.

Stamp duty land tax

Depending upon the level of rent stamp duty land tax may need to be paid and you will want to know how much this is before you take on the lease.

Points to consider in the lease

- Are the rights to be granted to you sufficient for your purpose?
- Are the rights reserved in favour of the landlord potentially too disruptive for your proposed use of the property?
- Have you agreed the frequency of rent reviews? Often this is at the end of every fifth year of the term although some landlords may ask for rent reviews every three or four years.
- Do you need a break clause allowing you to bring the lease term to an early end? If so, and if this is agreed by the landlord, then you should ensure that only the bare minimum of conditions are attached to the break right. Ideally 6 months' notice in writing to the landlord should suffice. However he will often require pre-conditions such as payment of rent and giving up the property

with vacant possession on the break date. What you should always resist is any proposal by the landlord that the break can only be exercised if you have complied with the covenants in the lease – this is almost impossible to achieve!

- Will you have the right to assign the lease and/or sublet the property?
- Will there be a service charge? If so, try to ensure that this is capped at an agreed level in every year.
- Is the business use allowed under the lease also an authorised planning use? You do not want to face enforcement by the local authority.
- Will you have sufficient rights to erect signage so that you can announce your presence in the building?
- Is the property in less than perfect condition? Then you should aim to agree that your repairing and decorating obligations will be judged against a schedule of condition and that you are not obliged to put the property in any better state of repair or condition than that described in the schedule.

These are just a few of the areas that should be very carefully considered before taking a lease. We are able to offer advice and assistance, from the heads of terms stage through to negotiating the lease and dealing with any associated licences that may be required, eg permitting tenant's fit out works.

Do not make the mistake of thinking that an easy way to save money is to avoid talking to a solicitor about the lease. Many tenants who have followed this route have lived to rue the day; perhaps either because the lease was drawn in draconian terms and as a result they have found it impossible to assign or underlet, or because it contained conditions attaching to the break right which made it impossible for the tenant to actually break the lease.

Our expertise

Our *Chambers*-rated commercial property team acts for both commercial property landlords and tenants on a range of transactions from small office or shop lettings up to multi-million pound sales and purchases of high value rental leasehold properties. We also manage commercial clients' rental property portfolios throughout England and Wales.

Contact

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