

PROPERTY LEASES: A PRACTICAL INTRODUCTION TO LEASES

This guide addresses some of the preliminary questions faced by new businesses considering occupying leasehold premises. This is an area where unwanted or unexpected liabilities can arise, and professional advice may be very valuable.

We are experienced in guiding clients through the process, and at recommending experts in other relevant areas such as property agents to help find suitable properties and negotiate commercial lease terms, surveyors and planning consultants.

If, having considered this guide, you would like to know more or to discuss your own circumstances in greater detail, please speak to your usual contact at Stevens & Bolton or a contact listed at the end of this guide.

What is a lease and what are its benefits? Are there any alternatives to leases?

A lease is the grant of a right to the exclusive possession of a property for a defined amount of time. A lease is an estate in land which implies certain rights and obligations on the parties to it. The benefits include security and certainty for both the parties whilst being able to maintain flexibility. As a tenant however it is important to remember that taking on a lease involves taking on potentially significant liabilities which are mentioned below. A licence to occupy may be preferable in some instances. A licence to occupy is a personal right or permission to use property and for short term requirements this may be more appropriate.

What sort of costs will I face if I enter into a lease, before, during and at the end of the lease?

Before; if you use agents and solicitors you will need to pay their professional fees. Spending money on

these fees up front will often save you money later on. For example, a solicitor can ensure the lease reflects your requirements for exiting the property so you can avoid being liable for rent when you no longer need it.

Depending on the value of the lease there may also be stamp duty land tax to pay when the lease is entered into.

During; a tenant is likely to be liable for costs including rent payments, service charge and maintenance payments, repair or decoration costs and insurance premiums. If the tenant wishes to make alterations to the property during the term, or underlet or assign (sell on) the lease then it is likely to need the landlord's consent to this and will need to pay the landlord's costs for giving this.

After; depending on what the lease says, at the end of the lease term you could be required to leave the property in a certain level of repair and condition. The cost of this is often under-estimated by tenants. Surveyors should be consulted at an early stage and

their advice can often lead to a reduction in costs for this.

Is it usual for the landlord to ask for a deposit or other forms of security, and if I pay a deposit, how and when will I get my money back?

Where the landlord is uncertain as to whether the tenant will be able to pay the rent and perform the lease obligations it is not unusual for it to ask for some sort of financial security. This is likely in the case of start-up companies with no or limited trading history and accounts. A landlord may ask for a rent deposit and this will allow it to use the money if the tenant is in breach of the terms of the lease. If not used, the rent deposit will be repaid to the tenant when the lease comes to an end. The exact timings of the repayment will be set out in the rent deposit deed governing the terms under which the deposit is held.

Personal guarantees are other forms of security a landlord may ask for, but there are risks associated with giving a guarantee. For example, if the guarantee is called upon, you could ultimately have to hand over your own assets, for example, your home.

What are the main obligations I will have as a tenant under a lease, other than paying rent?

Once you have taken on a lease the responsibility for the property usually rests with you including for repairs, alterations and decorations. Non-financial restrictions may relate to the use of the property and what may be kept at the property.

Will I be able to alter the property to suit my needs?

It is important that you discuss this with your landlord at an early stage as his consent will most likely be needed if you wish to carry out any works to the property. Whilst a landlord's consent must not usually be unreasonably withheld it is best to know up front what the landlord's position will be. It might also be necessary to consider whether planning consent is needed depending on the alterations required. For more information on alterations please see our separate guide: "Property Leases: altering leasehold premises without tears".

What happens if I no longer need the property, or need to move before the lease ends?

When negotiating a lease, it is a good idea to include break dates which allow you to bring the lease to an end early. If there is no break date in the lease, then assigning (selling) the lease to another tenant or subletting the property are other possible options. These are all issues that should be resolved at the heads of term stage and where legal advice is most valuable. The law surrounding these provisions is complicated and it is easy to agree provisions inadvertently that won't work in practice, and you can end up in a position where you cannot get out of a lease when you were expecting to.

What happens at the end of the lease, will I have any rights to stay on at the property?

In business tenancies for over 6 months there is a statutory right allowing the tenant to stay in occupation of commercial properties. This means that unless the landlord, following a strict procedure, presents a statutory ground to take back the property, you are entitled to continue in occupation. Furthermore even if the landlord does take back the property you may be entitled to compensation. Shorter term leases are often "contracted out" of this protection at the start and you should carefully consider the implications of this before you enter into a "contracted out" tenancy.

What happens if my business can't afford to pay its rent?

See our separate guide: "Insolvency: how does it affect your lease?"

CONTACT US

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The information contained in this guide is intended to be a general introductory summary of the subject matters covered only. It does not purport to be exhaustive, or to provide legal advice, and should not be used as a substitute for such advice.

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