

# PROPERTY LEASES: ALTERING LEASEHOLD PREMISES WITHOUT TEARS

Whether you are a prospective tenant or an ongoing tenant of commercial premises, your requirements and needs for space will change over time. Apart from sorting out the practical details such as architects and builders, a tenant should always check that any alterations it wishes to carry out are allowed under the provisions of its lease.

Examples of items which might require the landlord's consent to install are:

- Signs (both external and internal, and if the building is shared with other occupiers in shared entrances and corridors)
- Aerials and satellite dishes
- Internal partitioning
- Air conditioning and ducting
- Mezzanine floors and suspended ceilings
- Electrical sockets, computer and telephone points and light fittings and
- Kitchens and bathrooms

## WHAT DOES THE LEASE SAY?

Alterations provisions in leases broadly fall into two categories:

- An absolute prohibition. The landlord may still allow the alterations on a case by case basis, but would be entitled to charge the tenant a premium for doing so.
- A qualified covenant against carrying out alterations, such as "the tenant may carry out alterations with the prior written consent of the landlord". If the lease contains a qualified covenant, in most cases the landlord must act reasonably when making its decision whether to consent to the proposed alterations.

Leases typically contain a combination of both of these clauses so that, for example, a tenant may be prohibited from making alterations that affect the structure, or alter the external appearance of the building, but is allowed to carry out non-structural alterations with the landlord's prior consent. Sometimes a lease of office premises will permit the tenant to install and remove demountable partitioning without the landlord's consent, provided that the tenant supplies the landlord with "as-built" drawings once the works have been completed.

Most leases also contain reinstatement provisions, which require alterations to be removed at the end of the term. Leases sometimes, but not always, oblige the landlord to give notice to the tenant before the end of the lease that the landlord does actually require reinstatement

### **WHAT IS A LICENCE FOR ALTERATIONS?**

If the landlord consents to the tenant's proposed works, the consent is usually documented in a licence for alterations. The licence will contain conditions that must be observed and performed by the tenant, the most usual being that:

- The tenant must obtain and produce to the landlord planning permission (if needed) and any other relevant consents (e.g. building regulations)
- The works must be supervised by the landlord at the tenant's expense
- The works must be carried out in a good and workmanlike manner using good quality materials in accordance with approved specifications
- The works must be completed to the satisfaction of the landlord
- The works must be completed by a certain date
- The tenant must indemnify the landlord against all claims arising out of the carrying out of the works and
- The tenant must notify the insurer of the building and comply with the insurer's requirements in relation to the works

If the lease is already in existence, then the landlord will usually require the tenant to pay its costs in preparing and agreeing the licence to alter and any costs of a surveyor in approving the works.

### **WHAT OTHER CONSENTS MIGHT BE NEEDED?**

Planning permission may be needed. If in doubt, a tenant should seek specialist planning advice as to whether permission is required. Note that a lease may require a landlord's consent for the making of a planning application.

If a building is of particular historical interest or of architectural interest it may be listed. If it is, then listed building consent is required for alterations that may affect the character of the building. Listed building consent is a separate requirement from planning permission and it is a criminal offence to carry out alterations to a listed building without listed building consent

Building regulations approval is commonly required for alterations. Building regulations provide minimum standards that must be met when carrying out works. Failure to comply with building regulations may result in an enforcement notice requiring the removal of the works. Other remedies are available to the local authority such as prosecution or a court order to stop the works.

Your building contractor or surveyor will be able to advise you on which consents are required for the proposed works. We can recommend experienced surveyors and planning consultants, suitable for the nature of the project, the geographical area and the available budget.

### **CONCLUSION**

Making alterations to commercial premises is often a business necessity and can cause unwanted disruption but with some careful forward planning, the legal formalities can be dealt with early and not lead to unwanted complications later on.

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## KEY CONTACTS

For further information about any of the issues raised in this guide, please contact:



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