

## **PITFALLS TO LOOK OUT FOR WHEN NEGOTIATING A LEASE**

You have found suitable premises for your business which you think are ideal. You may wish to rush ahead and plan for your grand opening. However, before cracking open the champagne, fast forward and consider the following scenarios:

1. A couple of years down the line the roof leaks and although a nuisance you assume it is the landlord's responsibility to repair so you approach the Landlord asking him to undertake the repairs. You are surprised when the Landlord turns around and refers you to the provisions in the Lease which stipulate all repairs are your responsibility leaving you to foot the bill. It is important at the outset to agree the repairing obligations. In short term leases, the tenant should insist that he is only to be only responsible for the interior or alternatively for his repairing obligations to be qualified by reference to a schedule of condition so that there is no obligation on a tenant to keep the premises in any better state of repair than at completion as evidenced by a photographic schedule of condition.
2. Unfortunately your business fails and you wish to get out of the lease. You may think it is simply a matter of approaching the Landlord and handing the keys back to him. The Landlord at that stage turns around and points out that when you entered the lease you contracted to pay the rent and to observe the covenants for the duration of the term so in effect you are stuck.

You think you have been clever and negotiated a break clause, this may not always be as good as it sounds. If a break clause is qualified so that it is only exercisable if there has been no breach of the tenants covenants, the Landlord if he is so minded, could prevent the exercise of the break clause even if a breach is as trivial as if you have painted with two coats of paint rather than three!

Alternatively you may decide to assign or sub-let and find that when you approach the Landlord for consent, he points to the various conditions in the lease which may make it difficult or impossible.

3. It is at the end of the term and you wish to stay at the premises. You approach the Landlord to discuss this and are surprised that the Landlord points out that you have no right to stay at the expiration of the term. This would be the case if the security provisions granted by the Landlord and Tenant Act 1954 were excluded.
4. It is the end of the term and you decide to vacate and you hand back the keys to the Landlord. You are shocked a few weeks later when an extensive schedule of dilapidations land on your doorstep.
5. You agreed the rental figure at the outset and are therefore surprised six months down the line when you are sent an invoice requesting a contribution towards the insurance and a service charge. You thought the figure agreed was an all encompassing sum. It is important you are absolutely clear as to

what financial commitments you are signing up to. If there is a service charge you ought to have sight of the last three service charge accounts together with a budget for the current and next financial year to give you some idea of the likely expenditure. Ideally you should try to agree a cap on the amount of the service charge.

6. Your business is running successfully and you decide to undertake some alterations in order to increase office space. At a later stage the Landlord inspects, as he is probably entitled to do under the terms of your lease, and astonishes you by requesting you remove the new office as his consent was not obtained. It is usual that the Landlord's consent is to be obtained before any alterations can take place. It is a good idea that such requirement is qualified so that the Landlord's consent cannot be unreasonably withheld or delayed.

You will see that what you may think is simply a matter of finding a suitable property is potentially a mine field. At the outset you should consider carefully the heads of terms when negotiating them and take legal advice at the earliest opportunity.

If you require advice on any aspects of commercial property including sales, purchases and leases please contact Ruth Latham.

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