

## Leasing a commercial property



### Introduction

This is a practical guide for people starting their first business or people who have little experience of leasing business premises and has a number of features that you are likely to find in a business lease.

This guide is intended for general guidance only. Specific advice should be sought for individual properties. Please contact us for further information.

### Find a Property

#### **(i) How do I find a property to lease?**

Local estate agents both residential and commercial together with chartered surveyors will often have properties advertised for lease. You can find details of these on the internet or in your local Yellow Pages/Thompsons Directory.

#### **(ii) What can the property I find be used for?**

Before applying for a tenancy it is worth checking with the landlord of the property that they agree to the trade you want to carry out. Depending on what you want to use the property for, you may also need to apply for planning permission.

#### **(iii) Will I need to obtain Planning Permission?**

You should be aware that even if a landlord says you can use a business property for a particular trade, this does not necessarily mean that you will have planning permission to start that trade.

Below is a general overview of the three Local Authority classes for shops;

A – General retail use (post office, hairdressers, funeral directors, dry cleaners, green grocers and so on).

A2 & Financial and professional services (banks, building societies, accountants and other services that are considered appropriate in the shopping area).

A3 & Food and drink premises (takeaways, restaurants and so on).

The planning history of the property that you intend leasing will be relevant as this will determine whether a change of use is needed before you can start trading. It is therefore worthwhile contacting the Local Authority' Planning Department to ascertain the position.

#### **(iv) What other points should I consider?**

If you are starting your first business there will be many factors to consider. Businesslink is an advice centre for small or medium size businesses and it is worth speaking to them if you require any practical advice before starting the business.

In respect of business leases, these are often complex documents and as previously suggested you should contact us for detailed advice on the lease prior to committing to any premises.

You should be aware of the range of costs that you will incur in your day to day operations which are likely to include (but are not limited to) the following: –

1. Rent & you will be required to pay rent under most commercial leases at regular intervals usually quarterly payments over the year.
2. Business Rates & as with Council Tax, Business Rates occur in April of each year although you can pay in ten monthly payments. You should contact the Local Authority for confirmation of the current rate. The rates will usually increase each year.
3. Insurance & there are various types of insurance. Some for the property and some for the business itself.
4. Service Charges & These normally apply to offices and industrial properties but they can also apply to shops. If these do apply, your lease will set out the services that the landlord will provide which may include repairs, cleaning, security etc. These costs can be shared between the tenants who benefit from the services.
5. Legal and surveyors fees & you will be responsible for legal fees at the start of the tenancy. Please contact us for the details of what these fees will be. You may also incur legal fees during the course of your tenancy in respect of any Deeds or Licences you require during the course of your tenancy. Before commencing a tenancy we would advise you to have a survey carried out of the property as many commercial leases are full tenant repairing leases. You may also be responsible for some of the landlords legal fees during the course of the tenancy when applying for Deeds or Licences or if the landlord has to take legal action due to for example a breach of the lease.
6. Stamp Duty Land Tax & the government has altered the rules about Stamp Duty. The new rules apply from 1st December 2003. The new tenant must pay the Stamp Duty Land Tax. The amount of tax depends on the value and length of the lease. There is no stamp duty to pay for lower value leases, and then the stamp duty gets steadily higher for more valuable Leases. The rules for working out the tax and deciding whether your particular Lease is liable for stamp duty are not always straightforward. We therefore suggest that you contact us to advise you of the stamp duty implication before committing to a lease. Alternatively, you can contact the Inland Revenue direct. You should be aware that penalties can be incurred if you do not submit relevant duty within a certain time frame.
7. Registering your Lease with H. M. Land Registry & under the Land Registration Act 2002 all Leases that are longer than seven years and all assignments of leases with more than seven years left to run must be registered. It is important then that leases that fall within these categories are registered.

## **Contents of a Standard Commercial Lease**

### **Rent**

**When will I have to pay the Rent?**

This will depend on the terms and conditions of the lease. In most commercial leases rent is due on the usual quarter days which are 25th March, 24th June, 29th September and 25th December in each year. You should also check with the landlord whether VAT is payable on the rent.

### **Will my Rent increase during the term of the Lease?**

This will depend on the length of your lease and the terms and conditions of it. Leases in excess of five years would normally contain rent review provisions and these need to be carefully assessed by both your surveyor and legal advisors. If rent reviews cannot be agreed between landlord and tenant then they are often reviewed by an independent third party who is appointed to settle the dispute.

## Repairs

### **What repairs will I be responsible for?**

This will depend on the type of property and the conditions referred to in each individual lease. In general terms business leases are known as full repairing and insuring leases. This would mean that you are responsible for all repairs. If someone else shares the building with you the landlord will often be responsible for structural repairs. At the end of your lease you should be aware that you would normally be expected to leave the property in a good state of repair and conditions. In some instances a schedule of condition is recorded at the commencement of the term and you will be expected to put the property in no better state than is evidenced in such schedule of conditions.

### **Why would I have pay for repairs when I am paying rent to the landlord?**

When the rent is set the landlord will take account of the fact that you will be responsible for the repairs and the rent will reflect this accordingly.

## Alterations

### **Is it possible to alter the property?**

You normally have to get the landlords written consent if you wish to carry out any alterations to the property. If the landlord consents they will often grant this consent by way of licence for alterations. You should also be aware that some alterations may also require planning permission and you would therefore need to approach the planning department separately. There are sometimes exceptions to this rule where consent is not required from the landlord for non structural partitioning. This would depend on the wording of each individual Lease. You should also be aware that consents are often required from the landlord and the local authority in respect of any external signage or shop-fronts.

### **Is it possible to sublet the property or sell the lease?**

This will depend on the terms and conditions of the lease. Most commercial leases will permit an assignment of a lease subject to you entering into an authorised guarantee agreement with the landlord. This means that you would be guaranteeing the performance of the incoming tenant which will include payment of rent. If the incoming tenant leaves the property or goes bankrupt you should be aware that the landlord may call upon you to take the lease back. It is therefore important that you satisfy yourselves as to the financial standing of any incoming tenant. Leases may permit subletting subject to various conditions.

## Insurance

### **Who deals with the insurance and what does it cover?**

The landlord will normally arrange the buildings insurance and you will be responsible for your portion of the premium. As a tenant you are normally responsible for insuring the plate glass of the property. You will also need to arrange for your own contents insurance and public and employers' liability and insurance in most circumstances.

## End of the lease

Will I be entitled to a new lease at the end of the term?

This will depend on the terms and conditions of the lease. The law entitles tenants to renew their lease at the end of a fixed term. However in some instances the landlord will contract out of the relevant statutory provisions removing the tenant's automatic right to renew the lease.

**Please note that these guides are for informational purposes only, and do not constitute legal advice. You can contact one of our expert consultant lawyers using the form below.**

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