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Top 10 Tips When Taking a New Lease as a Tenant of Commercial Premises

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This is the scenario....you are excellent at what you do in business, whether it be producing goods or providing services. Your business is growing and you want to take some new commercial premises and are being offered a Lease.

This article focuses on just ten key points which you need to be aware of, and why it is so important that you ask us as your Solicitors to review the Lease which is being offered to you.

1. The length of the term

What is the length of the term, and is this adequately described in the Lease? You might want to expand your business in the years ahead, so is it right to take on too long a Lease, and do you want to try to negotiate a break option, which would allow you to bring the Lease to an end early, if you outgrow the premises? Why take on a potentially onerous 10 year Lease, if the maximum period you are going to want to Lease for is for 3 or 5 years?

2. The use to which the premises can be put

Not only must this be accurately described in the Lease, you may want to introduce some degree of flexibility, so that it is not too rigid. For instance, if the use to which you want to put the premises is for the sale of clothes, it would be better to describe the use as "any retail use", which would then enable an alternative retail use of the premises at some point during the term of the Lease (for instance if you want to assign the Lease to someone else or diversify your own business).

The other key issue in terms of use is to establish that not only does the Lease provide you with the necessary flexibility, but that planning permission exists for the actual use to which you want to put the premises, otherwise you may face an enforcement notice from the Local Authority.

3. Are the premises accurately described in the Lease?

This may seem an obvious statement, but it is important to make sure that not only are the premises correctly described in the Lease (if necessary by reference to a plan), but that the rights associated with the use of the premises are also accurately described, for instance will you have the right to use any car park spaces, and are these exclusive to you, what is the position concerning use of common facilities such as toilets, bin stores, etc. and do you have proper legal rights of access over any roads which are not public highways?

4. What are the repairing obligations in the Lease?

This truly is a potential problem area. You may consider that an obligation "to keep the premises in good repair" is fair enough, but not only may this extend to structural liability for the premises, it

would also include an obligation to put the premises in good repair if they are not already in good repair.

Particularly with a shorter term Lease, it is increasingly common practice (and we always recommend this to our tenant clients), to try to negotiate with the Landlord that the repairing obligation should be limited to the actual current condition of the premises, so you are not required to keep them in any better state of repair or decoration.

5. What is the rent?

Another seemingly obvious issue, but not only is it important that the rent is correctly described, but are there any hidden traps here, such as a rent review during the term of the Lease, and if so are the rent review provisions fair? Rent reviews are usually by reference to current open market rent in which case is there an independent assessment of this, but rent reviews may also be linked to factors such as the Retail Prices Index.

6. What other payments are due to the Landlord in addition to the headline rent?

You need to know what other payments you will be expected to make. The Landlord will usually insure the premises, and reserve the right to recover the premium from you as Tenant. In addition, depending on the type of premises you are taking, you may find that there is a service charge payable to the Landlord in relation to maintenance and repair of common areas. You will want to know what can be included in the service charge, and you may want to negotiate a cap on this service charge so as to maintain a degree of control.

You will almost certainly be responsible for payment of all utility services consumed at the premises and for the payment of business rates and the like.

7. Can you assign or sublet the Lease?

Circumstances may arise during the term of the Lease, when you want to assign (transfer) the Lease to another occupier, as you no longer need the premises, for whatever reason. Alternatively, you may want the right to sublet the premises, either as to the whole of the premises, or possibly you may want to sublet part of the premises. Does the Lease which is being offered to you entitle you to do this in principle, and what are the conditions which will attach?

8. Alterations (and signage)

Usually a Lease of commercial premises prohibits the Tenant from making any structural or external alterations, but permits internal alterations with the Landlord's prior consent, which the Landlord cannot unreasonably withhold. Similar provisions usually apply to external signage, and you need to know what the Lease will say about these matters, and whether you want to get issues of this nature cleared with your Landlord before you sign the Lease.

You will probably be required to remove any alterations and signage at the end of the Lease.

9. What happens at the end of the Lease - will you be entitled to claim a new Lease?

One of the oldest statutes still in existence, the Landlord and Tenant (Covenants) Act 1954, allows business tenants to claim a new Lease of the premises at the end of the current Lease, upon the then open market terms, except in a number of specific situations. However, it is increasingly common for the Landlord to try to exclude this Act, particularly in the case of short term Leases. Where there is a short term Lease involved, this is perhaps fair enough, but you need to know where you stand on this. We will be able to explain to you the implications of what the Lease says about the end of the term.

When the Lease does come to an end, you will probably find that your Landlord serves on you a terminal schedule of dilapidations, requiring you to make good any disrepairs or other damage, and to remove any alterations you have carried out and make good after such removal. This can prove expensive, and you may need our guidance as to what does and does not need to be done, and to ask us to negotiate the cost of the necessary work with your Landlord.

10. Who is paying the Landlord's costs?

It is normal practice for each party to pay their own legal costs in connection with the Lease, but occasionally the Landlord does try to put in a clause in the Lease requiring you to pay the Landlord's costs – other than in exceptional circumstances, there is no reason why this should be the case, so this is another small potential trap to be aware of.

There are many other issues to consider when taking a new Lease of commercial premises, some of which may be very case specific, but hopefully the above ten key points will be of assistance to you in understanding some of the issues which you need to be aware of when considering taking a new Lease.

Our Commercial Property Team will be happy to discuss these and all other relevant issues with you as well as guiding you through the “due-diligence” enquiry process which should be undertaken when considering taking on a Lease of commercial premises. For further information please contact any member of our [Commercial Property Team](#).

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Alternatively, please click on '[Contact](#)' on our website and submit your enquiry and an appropriate person will respond to you in due course.