

Commercial Property Glossary of Legal Terms

We hope the inclusion of explanatory notes on commercial property legal terminology is useful to you.

ALIENATION

This details the tenant's ability to assign or sub-let a lease.

ASSIGNEE

The corporate body or person to whom a lease is assigned.

ASSIGNMENT

This is the transfer of the lease to a third party. Most leases provide for assignment of the whole of the lease rather than part of the lease and also require that the outgoing tenant provide an authorised guarantee agreement.

AUTHORISED GUARANTEE AGREEMENTS

Authorised Guarantee Agreements were introduced by the Landlord & Tenant (Covenants) Act 1995 and generally apply to those leases entered into on or after the 1st January 1996. Under an Authorised Guarantee Agreement an outgoing tenant will be required to act as guarantor for the incoming tenant. If the incoming tenant does not pay the rent or other sums due under the lease or comply with the tenant covenants, then the landlord can require the tenant to do so. Also if the incoming tenant becomes insolvent then the landlord can require the outgoing tenant to take a new lease of the property for a term equal to that remaining under the lease.

BREAK CLAUSE

A break clause (or break option) is a clause which enables the landlord or the tenant, to end the lease before its end date. It is important that tenants comply with the often specific conditions needed to be complied with or fulfilled before the lease break date, otherwise it may mean that the tenant cannot terminate the lease early.

BREAK NOTICE

This is the formal notification from either the landlord or the tenant known as a break notice which confirms that they want to end the lease. Most leases state what should be contained within the break notice and some contain the actual wording required.

CHAIR AGREEMENT

This is a form of licence to occupy, which commits the non exclusive occupation of a hairdressers or beauticians chair in a salon.

CHANGE OF USE

All leases should contain a permitted use and the use clause should state whether or not a tenant has the ability to change the way the land and/or buildings are used, either as a result of internal or structural alterations or renovation or the business which occupies the property. Changes of use may require planning permission (unless within the same "class" of business use) and often require a landlords' written consent.

CLAWBACK

Clawback or "overage" provisions are normally used where land is sold and the seller believes that there may be the potential for valuable re-development of the land in the foreseeable future. For example, if derelict or other vacant land is given planning permission for re-development in the future, it will become much more valuable. Clawback agreements are used where the seller wishes to take a share of this increase in value. Considerable care and expertise is required in this specialist area.

COMPULSORY PURCHASE

Compulsory purchase orders are most frequently served by public bodies' i.e. local authorities and other government agencies and usually involve the purchase of land or rights normally from an unwilling owner i.e. in respect of new road schemes. The owner of the land subject to a compulsory purchase order may be entitled to compensation.

COVENANT

A covenant is an agreement by a person, company or other body to do something or not to do something and are known as positive covenants and restrictive covenants.

COVENANTEE

The person or body corporate that agrees to comply with a covenant.

DILAPIDATIONS

The term dilapidations generally refers to defects or items of disrepair that are covered by the tenant's repairing obligations and a lease. If the tenant is not complying with it's repairing obligations in the

lease, then usually the landlord will have the ability under the terms of the lease to serve a schedule of dilapidations on the tenant setting out details of those defects or disrepair at the premises and requiring the tenant to make them good. Schedules of dilapidation can usually be served on the tenant (if it is in breach of the repairing covenants) during the fixed period of the lease and also when the lease comes to an end. It is usual to instruct a surveyor to prepare the schedule of dilapidations.

EASEMENTS

An easement is a right benefitting a piece of land that is enjoyed over another piece of land owned by someone else i.e. a right to use a private road or path on someone else's land or to run services through it. The most useful way of creating an easement is by entering into a deed, but in certain circumstances easements may arise in other situations such as long user.

FULL REPAIRING AND INSURING LEASE (FRI LEASE)

Many leases are said to be full repairing and insuring leases and commonly known as FRI. The tenant will be responsible for all repairs to the property both internally and externally and also to refund to the landlord the cost of insuring the building.

FORFEITURE

Forfeiture is the ability of the landlord to terminate the lease before the end of the term in certain circumstances i.e. when a tenant is in breach of the covenants in the lease, has not paid the rent for a number of days or is insolvent. In these situations the landlord may have right to forfeit the lease and end the lease.

HEADS OF TERMS

The heads of terms identify and define the terms the seller and the buyer of the property or the landlord and tenant have agreed. The heads of terms outline the agreement reached before work commences on the drafting of the document.

INCOMING TENANT

The new tenant who is taking on or entering into the lease.

INTERNAL REPAIRING LEASE

An internal repairing lease requires the tenant to repair only the internal areas of the property e.g. paintwork and floor coverings. The landlord will usually be responsible for maintaining of the structural external parts however this is not always the case. Tenants should ensure that the lease contains a specific obligation on the landlord to repair the building.

LANDLORD'S CONSENT

Leases usually contain restrictions upon what the tenant may or may not do with the property being leased. The restrictions may relate to the use of the premises or limit alterations to the property. Some restrictions may be absolute and the tenant may not be allowed to use the property for a specific use or not carry out any structural alterations to the premises and other restrictions may require the landlords' prior, usually written consent before the change is made. Any consent provided by the landlord will usually require that the tenant is to be responsible for the landlords legal and other costs i.e. surveyors fees before considering whether to grant the consent or not.

LAND REGISTRY

The Land Registry is the government department which registers the ownership of land and property in England and Wales. Following the registration of land or property at the Land Registry, the Land Registry record any changes of ownership, mortgages or leases together with certain other interests that affect the land, following an application to register the change being made.

LANDLORD & TENANT ACT

The Landlord & Tenant Act 1954 (the Act) is split into two parts. Part 1 deals with residential tenancies' and part 2 is considered the part of the act that covers business tenancies. Part 2 of the act gives business tenants a degree of security with regards to their tenancy. It provides that a qualifying business tenancy will not automatically come to an end upon the expiry of the fixed term of a lease provided the tenant remains in occupation for the purposes of a business. Assuming the tenancy is not brought to an end by agreement between the parties i.e. surrender or forfeiture, the tenancy will only come to an end if it is terminated in one of the limited ways specified by the act. There are clear parameters around when the act applies and there are a number of exemptions and advice should be sought. Tenancies can be excluded from the protection afforded by the act and tenants should be aware of the implications of this.

LEASE SECURITY

This is also known as "security of tenure" and is provided by The Landlord & Tenant Act 1954 and the Regulatory Reform (Business Tenancies) (England & Wales) Order 2003. If the security of tenure is excluded from the lease at the outset, the tenant has no right to remain in the property. Landlords who are seeking to take back their property at the end of the lease should consider excluding the lease. If exclusion of the act is not made and security of tenure exists, the landlord can only seek to remove the

tenant at the lease end date by serving a Section 25 Notice and in that notice demonstrating certain limited circumstances.

LESSEE

The tenant.

LESSOR

The landlord.

LICENCE

A licence is a legal permission to do something i.e. a licence to carry out alterations or a licence to assign or even a premises licence.

OVERAGE

See clawback definition.

OUTGOING TENANT

The current tenant who is assigning the lease. The outgoing tenant will assign their lease to the incoming tenant.

OPTION AGREEMENT

Under an option agreement, a person is given a right to buy a piece of land, usually within a certain time period. The price may be fixed or determined by a valuation at the time at which the purchase (lease) takes place. Once the option agreement has been put in place, the seller is not normally able to prevent the sale from taking place once the option holder has confirmed their intention to buy the property.

NOTICE TO QUIT

This is a notice served by the landlord on the tenant to vacate the property. The notice to quit can only be used in certain circumstances.

PERMITTED USE

Most leases contain a use or permitted use clause. This clause will restrict specifically what the property may be used for. It is important that tenants consider such clauses carefully.

PERSONAL GUARANTEE (also known as the Guarantor)

A personal guarantee is an agreement entered into by a person (or potentially some other form of legal guarantor) with another party, under which the guarantor agrees to be liable for a third parties debts or to a certain amount or maybe unlimited, and put at risk the guarantors personal assets, including their homes.

PRE-EMPTION AGREEMENTS

Pre emption agreements are also known as a "right of first refusal", which differs from an option agreement, in that the owner is not compelled to sell the property once the buyer has confirmed their intention to buy. Instead, the potential buyer is only able to buy the land once the seller is ready to sell the property. The pre emption right means that, if the owner decides to sell the property, the potential buyer must firstly be offered the property before it can be sold to anyone else.

POSITIVE COVENANT

An obligation on the covenanted to specifically do some things i.e. an obligation on the coventee to pay a monetary sum.

RESTRICTIVE COVENANT

A restrictive covenant is a clause that imposes a restriction on the covenantee i.e. they must not specifically do something. Common examples of a restrictive covenant are not to use land for a certain purpose or not to erect a building on the land to enable the value and use to be preserved.

SCHEDULE OF CONDITION

A record of the condition of the premises at the start of a lease. Often this is attached to the lease and referred to in clauses relating to the state of repair and condition of the building and are particularly important and those that refer to the state of the building when it is handed back to the landlord.

SCHEDULE OF DILAPIDATIONS

This is a list of repairs and maintenance required by the landlord and is prepared with reference to the tenant's repair covenants outlined in the lease. The schedule of dilapidations prepared by the landlord at the end of the lease are known as terminal schedule of dilapidations and the tenant is required to carry out works or pay an amount estimated by the landlord to complete these works.

SECTION 25 NOTICE

A Section 25 Notice is prepared by the landlord and served on the tenant where the tenant has lease security. It is served towards the end of a tenancy or after a tenancy has expired and is used to inform the tenant whether or not the landlord agrees to the grant of a new lease.

SECTION 26 NOTICE

A Section 26 Notice is prepared by the tenant and served on the landlord where the tenant has lease security. It should be served before the end of the tenancy and is used to inform the landlord that the tenant requires a new lease for the property.

STAMP DUTY LAND TAX (SDLT)

Stamp Duty Land Tax is a tax charged on transactions involving the acquisition of an interest in the UK, where the value exceeds a certain threshold. Stamp Duty Land Tax is charged at different rates, and has different thresholds, depending on the type of property and the value of the transaction.

TERM

The length of time the lease will be in place or run.

VALUE ADDED TAX (VAT)

VAT is a tax on the supply of goods and services made by a person registered for VAT (which can be an individual, partnership, a company or other form of legal entity) in the course of a business.