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## **COMMERCIAL LEASEHOLD CONVEYANCING**

### **\*\*ASSIGNMENTS OF LEASES\*\***

### **\*\*GRANTS OF NEW LEASES\*\***

We carry out leasehold work for a fixed fee, which will be provided in a quotation setting out our legal fees and the additional costs we pay on your behalf and any applicable VAT and/or disbursement payments. A typical leasehold transaction would include the following costs:

- The fees for our work (which are subject to VAT at the rate of 20%).
- Costs paid by us to third parties on your behalf.
- Stamp Duty that we pay on your behalf to the HMRC (if applicable).
- Costs (expenses and disbursements). An expense is a service or good purchased from a third party by us so that we are able to carry out legal work for you. Expenses will attract and incur a VAT charge. A disbursement is a cost addressed to you as a client. A disbursement may also attract and incur VAT, but we will not add VAT if it does not.

There are often additional costs that might include:

- Fees paid to HM Land Registry for copies of the documents of ownership of the property such as title deeds and office copy entries;
- A fee for searches of the Local Authority (if requested);
- Fees for bankruptcy searches;
- Fees charged by our bank for electronic money transfers, and
- Fee payable to Landlord such as the Notice of Transfer fee

We will give you a more accurate quote after our initial consultation meeting with you. Any Agreed Fee or Fixed Fee information will be clearly set out in our Client Care Letter or initial consultation letter. There will be no hidden extra charges added on at the end of the transaction. We will never increase our fees for the scope of the work for which you have been quoted. If unforeseen complications or aspects of the transaction we were not told about emerge as your matter progresses, which require additional work not included in our costs quotation, we will inform you of the additional fees for that extra work.

The details of your transaction and the applicable key stages will also be set out fully in our Client Care Letter which will be sent to you when you instruct us.

### **Our Fees**

#### **Virgo Solicitors Limited**

Suite 21, Imperial House, 64 Willoughby Lane, Tottenham, London N17 0SP

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Contracted with the Legal Aid Agency



In some cases, we charge on an hourly rate basis. The hourly rates we charge will depend on the seniority and experience of the lawyer who has conduct of your matter and the expediency of your matter. We will tell you about who will be working on your matter in our Initial Assessment letter and their respective professional hourly rate. Our current hourly rates are within the ranges of:

<b>Virgo Solicitors Personnel Hourly Rates</b>	
<b>Personnel</b>	<b>Hourly Rates</b>
Partners	£300 - £400
Senior Associate Solicitor	£200 - £300
Associate Solicitors	£150 - £200
Assistant Solicitors	£100 - £200
Trainee Solicitors	£125 – £175
Solicitor Apprentice	£80 - £125

On average, most instructions may take between 5 - 20 hours of work to process and complete. Therefore, the average cost for such a matter may be within the range of £1,750 - £7,000 if the work is done solely by a Partner and about £875 - £3,500 if a junior Solicitor does the work.

### **What is an assignment of a lease?**

This is the transfer of an existing lease by the current tenant of the lease to a new and incoming tenant with the Landlord's consent. The main parties involved in the assignment of a lease are:

- The Assignor who is the person who will be coming out of the lease
- The Assignee who is the new person who will be entering into the already existing lease
- The Landlord will remain the same person

Each party in the transaction will have their own solicitors and they will each be expected to pay their own legal costs. However, it is usual in the assignment of a lease for the Assignee to also pay the Landlord's legal costs.

### **The Process of assigning a lease**

The typical stages in the assignment of a lease are: -

1. The Assignee instructs their solicitors on the assignment transaction
2. The Assignor's solicitors will contact the landlord's solicitors, informing them of the proposed assignment and will ask for the Landlord's consent to the assignment of the lease.
3. The Landlord's solicitors will usually request further information regarding the incoming Assignee e.g., trade or bank references as security that the Assignee

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- is of sufficient financial standing to be able to take on the responsibility of acquiring the lease;
4. Once the Landlord's solicitor is satisfied with the references provided by the Assignee they will draft the following documents, that will become legally binding on completion of the assignment:
- Licence to Assign: A Licence to Assign is a document that enables the Assignor to transfer the lease to the Assignee with the Landlord's permission. All three parties i.e. Assignor, Assignee and Landlord will sign this document.
  - Rent Deposit Deed: A Landlord will usually require a rent deposit as a precondition to providing its consent to an assignment of the lease. The rent deposit is a sum of money which will be provided by the Assignee (who will become the new tenant) to the Landlord as security for payment of the rent and performance of the tenant's covenants in the lease. A rent deposit is usually demanded by landlords as it is an immediately accessible source of money that can be withdrawn as soon as the tenant is in breach of a relevant covenant in the lease.
  - Authorised Guarantee Agreement: An Authorised Guarantee Agreement is a legal document where the Assignor guarantees the performance, of the Assignee, of the covenants from which the Assignor has been released. In the event that the Assignee is in breach of any of the lease covenants, the Assignor agrees to bear the burden.

### **Can the landlord refuse consent to an Assignment?**

Most leases will say that the Landlord cannot "unreasonably" withhold consent. According to section 19 (1A) of the Landlord and Tenant Act 1927 the landlord can insert conditions in the lease, which need to be met in the case of an assignment. If these conditions are not met, the landlord's refusal to assign the lease will be deemed reasonable. The landlord could, for example, require the prospective assignee to be of sufficient financial standing to comply with the covenants of the lease.

The landlord is also under a duty to deal with an application for assignment within a reasonable time and must give the tenant written notice of his decision whether or not to give consent. If the consent is withheld the landlord must specify its reasons for withholding it.

If the landlord cannot be persuaded to change its mind, it is possible to challenge the decision in Court, but this can be difficult and expensive. If premises are assigned without the landlord's consent, the landlord may not recognise the new tenant i.e. the Assignee and continue to hold the original tenant i.e. the Assignor liable for the rent and all other provisions of the lease including any breaches of the lease covenant by the Assignee.

For advice on a lease assignment, please contact our Property team.  
A solicitor's guide for everything you need to know on assignment of a lease!

### Grant of a new lease

A lease is the grant by the landlord of a right to the exclusive possession of land for a fixed period of time to the tenant in return for the landlord getting rent. At the start of the transaction both the landlord and the tenant will agree the main terms of the lease. The agreed terms are usually set out in the Heads of Terms ('HoT') document. The matters agreed in the HoT will set out the basis of negotiation for both the landlord and tenant's solicitors.

### Heads of Terms

HoT are the starting point for most transactions and are usually prepared by the landlord or their agent, and should set out the key commercial points in a lease. If essential aspects of the proposed lease are missing then this can impact the negotiations of the lease.

HoT are usually marked '*subject to contract*'. This means that even if they are signed by the parties they will not be legally binding until a formal lease is signed and dated.

### Key points:

#### 1. The extent of the property and rights included in the lease

It is vital that you understand what you are renting at the outset. A lease can either be of the whole or part of a building and this should be clearly spelled out in the HoT (preferably with a plan to show the floor layout). You should check this carefully before you sign any lease contract.

Any rights that need to be included in the lease, such as parking or use of a third-party's facilities should be set out categorically in the contract. You must not assume that you have a right to access or use a facility because it is on the lease plan.

#### 2. Rent

It is common for the tenant to pay rent quarterly in advance rather than monthly. This can have a significant cash flow effect so plan accordingly. Check also whether the rent will be subject to VAT. Property rent is not automatically subject to VAT but many landlords do charge VAT and/or will retain the ability to charge VAT if they need to. If VAT applies to the rent it will also apply to other costs which the landlord charges to the tenant.

Rent will be payable whether or not you are trading from the property. If the property is damaged (e.g. by fire) then the landlord takes out additional insurance to cover loss of rent and your obligation to pay is suspended until the property is reinstated. However, as has been widely reported in the news, closure for other reasons (including the government restrictions imposed during the pandemic) does not



automatically relieve you of the obligation to pay rent. Whilst we are seeing more instances where tenants are able to negotiate 'pandemic' rent suspensions, it is by no means universally accepted by landlords.

### 3. Security of tenure

As a general rule tenants operating a business from property benefit from a form of security of tenure. This means that at the end of the lease term they can apply to the landlord for a new lease on substantially the same terms as their current one (subject to an uplift in rent). In some circumstances the landlord may be able to avoid granting a new lease (such as where they plan to redevelop the site) but they may have to pay compensation to you to do so.

It is also possible to exclude this right to security (often called 'contracting out') provided certain steps are taken before the lease is entered into. In this case you have no right to stay on, and even if the landlord decides to offer an extension, it can do so on any terms that he pleases, there are no statutory controls on this.

### 4. Repair

Unlike residential leases, most commercial tenants are responsible for the repair of their property and all the plant and machinery within it, with the repairing obligation potentially requiring the tenant to put the property into a better condition than it was at the start of the lease. However, this can depend on a couple of things:

The extent of the property included in the lease. A lease of whole frequently includes the whole of the structure of the building, not just the interior. Leases of part are usually more limited, with the landlord responsible for maintaining the structure and recharging the cost via a service charge.

### 5. Alterations

Most leases will prevent you from doing any works to the property unless you have first obtained the landlord's written consent. In some cases the lease may prohibit alterations completely. If you need to do work to the property to 'fit out' before operating then discuss these works early on and make sure these are agreed at the outset. Usually the landlord will insist on a 'licence for alterations' which will set out which works are permitted and impose obligations on you to remove works before the end of the lease.

### 6. 'Selling' the lease

Tenants assume that once they have taken a lease it is theirs to deal with as they wish. That is rarely the case, and the lease will normally have lengthy clauses dealing with how and when you can either sell (assign) or sublet the property. Expect that these will include the landlord being able to 'vet' the financial strength of your buyer and to impose conditions on the assignment, including that you give a guarantee (sometimes called an 'AGA') that the buyer continues to comply with the lease obligations after the lease is sold.

## 7. Break clause

It is common for a lease to contain a clause allowing the tenant, landlord or both parties to end the lease early (usually called a 'break right' or 'break clause'). As a tenant, a break right can be a particularly important should you need to change premises for any reason (i.e. expansion, need for a new location, financial difficulty) during the lease term.

A break right is almost always agreed at HoTs stage but if this is not in the HoTs and you want it to be raised, you should tell your solicitor as soon as possible.

## 8. A building survey

As a tenant, you will be responsible for keeping the property in repair (see above). It is therefore important to make sure that you understand the condition the property is in at the date you are planning to lease it, and arranging for a professional survey can help understand this.

Sometimes it is possible to limit the repairing obligations by agreeing a 'schedule of condition' for the lease. This highlights the state of repair the property before you take the lease and limits your obligation to repair the property to keeping it in no better condition than that shown in the schedule. Money spent on preparing a professional schedule of condition will pay dividends when it comes to finalising repair issues with the landlord at the end of the lease.

## 9. Insurance

In most commercial leases, the landlord insures the building with the insurance premium being re-charged to the tenant either entirely (for a lease of whole), or a proportion (for a lease of part). However, there are a number of considerations for tenants regarding insurance which should be discussed with your solicitor at an early stage including:

What is insured – a commercial lease specifies various 'risks' which the landlord is obliged to insure against (subject to certain exceptions) such as flooding, fire and storm. However some risks (such as subsidence and terrorism) can often be excluded, meaning the cost of any damage caused by these risks may end up being the tenant's responsibility. Discuss this point with your solicitor and remember that the landlord will only insure the property, not your fixtures and fittings nor any losses to your business if the property is damaged.

Ask to see a copy of the landlord's insurance policy and make sure you are comfortable and familiar with its terms. The lease will exclude the landlord being responsible if the insurers refuse to pay because you have done something which invalidates the policy, so it's important to understand what is required of you as tenant.

## 10. Outgoings

Remember that the rent will not be the only cost of ownership; you should budget to have to pay for the following:

### **11. The annual rent.**

The landlord's insurance premium/a fair proportion if a lease of part. Any ordinary outgoings attributable to the premises such as business rates, water, gas, electricity.

Service charge if the property is on an estate or part of a larger building. If you have any particular concerns about what you will be required to pay as a tenant, you should raise these with your solicitor early in the transaction.

### **12. Statutory compliance**

Being a tenant of a property comes with various responsibilities, two of the most common (but often forgotten) being:

- The Control of Asbestos Regulations. If the building predates the early 2000s then it is important to understand that these Regulations require the tenant to have regular surveys for asbestos carried out and to have health and safety plans in place to protect staff and contractors from the risk of exposure to asbestos. Even if the landlord is able to provide a copy report for the property, it is important for you to carry out your own survey and to keep this up to date.
- The Fire Safety Order. Anyone with responsibility for commercial premises is required to carry out regular assessments of fire safety risks and ensure adequate plans are in place. Again, even if the landlord is able to provide a copy report then you have a separate duty to maintain records and policy documents.

### **13. Stamp Duty Land Tax (SDLT)**

Depending on the amount of annual rent payable and the length of the lease, the lease may be subject to SDLT, which currently is payable within 14 days of completing your lease. Your solicitor will assist you with preparing the return you need to submit, as well as letting you know the amount you need to pay.

For example – a lease with a term for 10 years at a rent of £30,000 a year will cost just under £1,000 in SDLT under the current SDLT rates.

If you are on a tight budget please ask your solicitor to carry out a rough SDLT calculation at the start of a transaction so you can factor this into the overall transaction budget.

### **14. Do I have to register my lease?**

If your lease is for longer than seven years it needs to be registered at HM Land Registry. In many cases even leases of less than seven years need some sort of entry making at the Registry. Although your solicitor will deal with registration for you and explain the process in more detail after completion, you should be aware that it can take several months for the Registry to complete the application. It doesn't affect the

legality of the lease in the meantime but it can be a surprise when you receive the registration document months after the lease was completed.

### **15. How long does it take to negotiate a lease?**

There is no set timescale for how long it takes from issue of HoT to completion of the lease and keys being handed over. However, we would usually expect a normal lease transaction (i.e. of a standard building such as an office with no unusual terms or third party consents required) to take a minimum of six weeks from the date we receive the HoT.

It is possible to complete leases in less time than this but usually this will mean that you may have to concede more points in the negotiation in order to meet the deadline. If you are working to a particular completion date it is important you let your solicitor know this as soon as possible so they can identify any relevant issues.

One key factor in timescales is third party consent. This can include a superior landlord's consent (because your landlord is themselves a tenant) or where the landlord needs consent from its lender. These consents are out of your solicitor's hands and can often make timescales very unpredictable so do not make arrangements (like booking works to be done) until your solicitor can confirm a fixed date for completion.

### **Renewing a Commercial Lease**

Once you have found a commercial property which provides the location and facilities you need to conduct and grow your business, the last thing you need is to be unable to renew your lease when it expires. Fortunately, under English law, commercial tenants are well-protected under the Landlord and Tenant Act 1954.

### **What protection does the Landlord and Tenant Act 1954 provide to business tenants?**

The Landlord and Tenant Act 1954 (the Act) provides commercial leaseholders 'security of tenure'. This means they have a statutory right to renew their tenancy upon expiry. In most cases, a landlord and tenant will negotiate the terms of a new lease between themselves. However, if they cannot agree, either party can apply to the court to have a new tenancy granted. Generally, if there is a dispute over the terms of the new lease, the court will apply a market rent based on expert evidence and strive to keep the status-quo regarding other terms of the lease such as the right to make alterations.

In addition, the Act provides a business tenant the right to apply to the court for a new lease should their landlord decide to refuse to renew the tenancy for a reason which is not permitted under the Act.

### **Does the Act cover every type of commercial lease?**

There are certain business tenancies that cannot benefit from security of tenure. These include tenancies concerning:



- Mining
- Farming
- Fixed-term tenancies of six-months or less (although these can enjoy security of tenure after 12 months as can periodic tenancies)
- Where there is a licence to use the land rather than a lease
- Sub-letting where the leaseholders are not occupying the premises themselves
- Long leases extended under the Leasehold Reform Act 1967 'Service tenants' employed by the landlord
- Tenants who have contracted out of the Act

### **What does it mean to contract out of the Landlord and Tenant Act 1954?**

A commercial landlord and tenant can agree to contract out of the security of tenure provisions. If a tenant states they wish to contract out of the Act's provisions, the landlord has a statutory obligation to provide notice of at least 14 days to the tenant, explaining the consequences of forfeiting their right to security of tenure.

If it is not possible to provide 14 days' notice, the tenant is required to sign a statutory declaration stating they fully understand the consequences of their decision to contract out of the Act. If you waive your right to security of tenure, your landlord has no obligation of a commercial lease renewal when it expires.

### **How do I renew my commercial lease?**

To have a commercial lease renewal, you need to inform your landlord 6-12 months prior to the lease's expiry date that you wish to renew. Make sure you state the terms of the lease, such as the amount of rent paid and the duration of the new lease in the renewal notice. Your landlord will have two months to dispute the granting of a new lease on one of the grounds listed below.

### **Are there any situations where the landlord can refuse to renewing a commercial lease protected by security of tenure?**

Under the Act, a landlord can only refuse to grant a new lease in the following circumstances:

- The tenant has breached their obligations, i.e., failed to keep the premises in good repair, or has regularly been late in paying rent
- The landlord offers to provide other, suitable premises
- Where a sub-tenant who is occupying part of the building wishes to renew their lease, but the landlord wants to rent the premises as a whole
- The landlord wants to demolish or rebuild the premises
- The landlord wishes to occupy the premises themselves

If the landlord decides not to renew a tenancy protected by security of tenure on one of the above grounds, they must issue a Section 25 notice to the tenant. A failure to respond to a Section 25 notice means the business tenancy will end on the date specified.

If the landlord decides to end the tenancy on one of the grounds that does not involve 'fault' on the part of the tenant, i.e. they wish to re-occupy the building themselves, the tenant may be entitled to compensation; however, the court will not order the lease to be renewed. To ensure you do not encounter a stressful dispute when renewing your lease, it is recommended you seek legal advice prior to applying for renewal.

Our Conveyancing Team is led by Dr. Abess Taqi who is a practising Solicitor and Notary Public in England and Wales. Abess is also an experienced Conveyancer. Abess can be contacted at our offices and his contact details are as follows:

Tel: 0208 885 3999

Email: [abess@virgosolicitors.co.uk](mailto:abess@virgosolicitors.co.uk)

Abess's Legal Assistant, Mrs. Sengul Turgut, who is a qualified Paralegal, will have access to your file and matter, and she will be able to respond to any query/queries that might arise during the course of your transaction. Shen can be contacted [shen@virgosolicitors.co.uk](mailto:shen@virgosolicitors.co.uk)

We try hard to avoid changing the people who are handling your work but if this cannot be avoided, we will notify you promptly who will be handling your work and why the change is necessary.

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