

What to consider when entering a lease

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BUSINESS GUIDE

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The form and detailed terms of a lease will be determined by the commercial agreement struck between you and the Landlord and this will often depend on the location and nature of the premises. If you have an agent then they will be able to negotiate these terms on your behalf.

Heads of terms are used by the parties to determine the overall scope of a transaction and to record the main points of principle and commercial matters. The aim is to agree in outline the important deal-making terms before legal costs are incurred.

The key terms of a lease that you will need to consider are as follows:

Term: The lease term is the length of time that you will be committed to the premises and under an obligation to pay the rent. You must consider very carefully what sort of arrangement you can afford to enter in to. For some businesses they need to be able to show that they have the right to use premises for a particular period of time, and for others they may prefer to limit their commitment to as short a time as possible.

Break clause: A lease will continue for the term, unless you have the benefit of a break clause, which enables you bring the lease to an end early. Providing that the break clause is for your benefit only (rather than the Landlord) then you have nothing to lose by trying to agree these as frequently as possible.

Rent and rent review: Rent can either be paid quarterly or monthly and you will need to ascertain what is best for your business. The level of rent payable will depend on the level of open market rents being paid in the area at the time. The Landlord will want to build in rent reviews during the lease term but you will want to limit these as much as possible.

Repair: It is important to establish between you and the Landlord who is going to be responsible for repairing and to what those obligations will extend to. You will want to keep your liability to a minimum and the Landlord will want to impose as many obligations on you as possible. You should always insist that your repairing obligation is limited by a schedule of condition, which is a series of photographs showing the condition of the premises. You will want to ensure that you are not obliged to put the premises back in any better condition that it is in at the start of the lease, as shown in the schedule of condition.



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Landlord and Tenant Act 1954: If a lease is a business lease, within the Landlord and Tenant Act 1954, this has important implications for both you, as a tenant you will have certain statutory rights to remain in the premises at the end of the term, and for the landlord, who may not be able to recover possession of the premises at the end of the term. If the lease is inside the Act then you need not vacate the premises on the contractual expiry date of the lease. Instead you will have the right to renew the lease at the end of the contractual term, although this may be defeated by the Landlord in certain and limited circumstances.

If the Landlord is only prepared to offer you a contracted out lease then you need to ensure that your agent considers the impact of this upon the level of rent and you also need to consider whether you can afford to risk losing the premises at the end of the original term.

Rent deposit or guarantee: Where a landlord is uncertain that the tenant will be able to pay the rent and comply with the covenants the Landlord may require additional security. This typically happens in the following situations:

- Where the tenant is newly incorporated
- OR, where the tenant's financial accounts do not show a sufficient level of profit (sufficient from the Landlord's point of view)

A rent deposit deed requires you to pay a cash deposit (generally six months' rent) into a designated account. The Landlord will be able to call upon these monies if you fail to keep up with the rent or breach any of the other provisions in the lease.

Alternatively, the Landlord may ask for a personal guarantee from you, for example a relative or the Bank.

Other matters to consider

In addition to the terms of the lease, there are two other matters which will require consideration:

Planning permission: Just because a Landlord grants you a lease of premises does not mean that it has the authorised planning use for your business use. You must ensure that this is checked prior to completion.

What tax will I pay: The main taxes that arise in connection with, and following, the grant of a lease are:

- Value Added Tax (VAT) – if the Landlord has elected the property for VAT then it will be charged on the rent
- Stamp duty land tax – the grant of a new lease gives rise to a stamp duty land tax charge. The level of duty payable will depend on the length of the lease term and the level of rent
- Business rates – the lease will make the tenant liable for the business rates

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Mary deals with all manner of property transactions in relation to commercial, agricultural and residential property.

Having read law at Nottingham Law School and completed her LPC at the College of Law in Guildford, she trained at Harrison Clark Rickerbys and has been with the firm since 2005.

Mary has a leading role in the Agriculture and Rural Affairs team and forms part of the Wye Valley residential conveyancing team and the commercial property team. She is able to advise on the following:

- Farm sales and purchases
- Residential house sales and purchases
- Country House and Estate sales and purchases
- Farm Business Tenancies
- Agricultural Holdings Act Tenancies
- Option Agreements
- Fishing and Shooting rights
- Mortgages
- Commercial leases
- Option agreements and leases of renewable energy projects

