YOUR PROPERTY

A How-To Guide From The Legal Director

Introduction

The premises from which your business operates can represent significant cost, commitment and risk. The truth of this was keenly felt by businesses during the national lockdowns and the post-pandemic commercial property landscape has seen some significant and lasting changes.

It's more important than ever to understand your leasehold property commitments, mitigate your property-related risks and control costs. We'll guide you through potential risks and provide some best practice to manage your commercial property and limit your financial and commercial exposure.

If you have any questions, or would like our advice, please contact us on 020 3053 8613 or info@thelegaldirector.co.uk

Potential Exposures

It is easy, once contracts are signed, and you are involved in the day-to-day work of running your business, to forget about the terms that you have agreed to in your lease. These can have significant financial implications and may even impact your ability to trade. Key things to look out for:

- **Rent reviews**
  These offer an opportunity to engage with your landlord and in a rising market, it may be in your best interest to settle as soon as possible.
- **Lease expiry date**
  This has the potential to be enormously disruptive for your business if unexpected. Build in sufficient time to deal with any eventuality.
- **Break clauses**
  If you miss the notification date, you lose your right to exercise the break clause in your contract.
- **Dilapidations**
  Referring to the condition of a property during occupancy or at the end of a lease, dilapidations set down your obligations to maintain and repair the premises and can expose you to significant cost and effort. You need to be very clear about your commitments and who pays for what from the outset.
- **Yielding up obligations**
  It can be expensive to exit a building. Alongside dilapidations, pay particular attention to clauses allowing the landlord to claim loss of rental income during any period where they are unable to re-let the property as a result of breach of obligations. In addition, the lease may give the landlord the right to dispose of any tenant belongings that have been left at the property.
- **AGAs**
  An AGA (Authorised Guarantee Agreement) places an obligation on an outgoing tenant to guarantee the performance by the new tenant of covenants contained in the lease. Previously standard in leases, there is increasing opportunity to push for a reasonableness test rather than an absolute requirement so discuss this with your lawyer before entering an agreement.

You may not be able to stop rent increases or prevent a landlord from ending a lease on expiry but, giving yourself plenty of time to manage lease events will give you the best chance of making the right decisions for your business and minimising any potential negative effects.

Recommended:

Get legal advice before making any changes to your leasehold property as there are both risks and opportunities that you may not have considered. Alterations done without consent could even result in the forfeiture of your lease, so it is important to follow correct procedures.

There is also the risk that any improvements you make incur an increase in rent or see you footing large bills on the expiry of the lease. A good lawyer, engaged from the outset, can pre-empt these risks and even negotiate terms that make it advantageous for you to improve your leasehold property. In certain circumstances - if changes improve a building's energy rating for example - landlords may even be willing to contribute to costs on a fit-out.

Managing Your Leasehold Property

To manage your property and leasehold portfolio effectively, you need to have good understanding of related liabilities and responsibilities. Become familiar with your lease(s) and schedule in any trigger dates that will require action.

The best way to do this is to standardise the process:

- Assemble and collate contracts and documentation for your leasehold property estate
- Scan and digitise
- Build your leasehold property data repository
- As priority, identify imminent risks and issues
- Build a 12-monthly forward calendar of leasehold property issues and required actions
- Add new leasehold properties as they are required
- Annually, refresh 12-monthly forward calendar of leasehold property issues and required actions

Recommended:

Appoint a legal advisor to manage your property portfolio. The process can be complex, and it is easy to miss critical events. Not only will an experienced Commercial Property lawyer remember and act on key dates such as lease breaks and rent reviews, but they will also use these opportunities to negotiate with your landlord and explore the possibility of more favourable options.

Conclusion

There is currently still a lot of uncertainty in the Commercial Property market and tenants are increasingly wanting more flexibility in their leases and more protection against unpredictable events. Our lawyers have the experience to negotiate your interests effectively and exploit every opportunity to mitigate risk to your business and manage your leasehold property exposure.

Embedded within your company on a part-time or flexible basis, our lawyers will work hard to align your property with your business needs and will deal with your property management on an ongoing basis. This means that all your property documentation will be organised, and all lease events scheduled. We will proactively use these events to negotiate options under the lease and will give you legal advice that is business-focussed and practical so you can make informed decisions about your leasehold property.

If you would like to know more or want our advice about your property, please contact us on 020 3053 8613 or info@thelegaldirector.co.uk.


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