

Business leases: beginnings and endings

What is a business lease?

A lease gives a tenant the exclusive right to occupy property consisting of land and any buildings on it for a fixed period of time in return for payment and compliance with agreed terms.

A business lease relates to property used for commercial rather than residential properties, although in a few cases there is mixed use e.g a shop with a flat above.

Business leases are more varied in the kinds of property they are applied to which can include factories, farms, pubs, hotels, shops, restaurants, warehouses and many others. They also vary considerably in complexity. Hence each one is usually “bespoke” and terms are not standard.

Beginnings

It is important to check the lease document carefully before signing and take such advice as necessary. If it is a new lease, it will often be preceded by detailed heads of terms negotiated through selling agents and these should be checked carefully on receipt and any queries dealt with before the lease itself is drafted.

Important items to be agreed will include a plan of the property with access, boundaries and any communal facilities clearly marked; the length of term; rent and service charge; repairing obligations; permitted use (e.g is this consistent with any planning use); whether there is a potential liability to Stamp Duty Land Tax; and whether there is a right to renew at the end of the term.

Endings

If both parties wish the lease to end at the specified date, then the property should be vacated promptly to avoid potentially complex and expensive issues arising.

If the lease is to continue the procedure depends on whether the statutory right to renew was excluded at the beginning.

If there is a right to renew, the statutory notice must be given within the time limits and the correct procedure followed.

If the right to renew has been excluded, then a landlord and tenant can negotiate a new lease, but do not have to, and negotiations should be started in plenty of time.

If there is no agreement and the tenant “holds over” after the end of the term complications can easily arise because of the uncertainty about the basis in law of the continued occupation by the tenant. This could be a licence (which can be ended on notice by the landlord) or a tenancy at will which can also be ended on notice by the landlord, a periodic tenancy (and the question will arise what is the appropriate period). In some cases, a secure tenancy can be created by inadvertence.

A lease can also be ended midterm for various reasons including:

1. An agreed break clause in which case the agreed notice period and any other lease conditions must be met.

2. A breach of covenant by the tenant including non-payment of rent.
3. Damage or destruction to the property to such an extent that the lease cannot practically continue, and the provisions contained within the lease will then follow as to destination of insurance proceeds etc.

For advice on business lease beginnings and endings please feel free to contact us on

alison@alisonfielden.co.uk

01285 653261

Alison Fielden & Co

The Gatehouse

Dollar Street

Cirencester

Gloucestershire

GL7 2AN