

A Guide to Leasehold Business Premises

Some points to remember when buying or taking the grant of a lease



What is leasehold property?

Leasehold property is land held under a lease for a specific period of time e.g. five years. You pay an annual rent which, depending on the length of the lease, may be subject to review. At the end of the lease (see 11 below) you give the property back to the landlord. The lease will set out what your and the landlord's respective rights and obligations are.

Buying or taking a grant of a lease

When buying or starting up a business, you will normally either buy a lease as part of the business you are acquiring or you may take a new lease direct from a landlord. This is normally referred to as the landlord granting a lease. Remember to consider the following when buying or taking a grant of a lease:

1. How long does the lease have to run?

When you buy an existing lease, check how many years it still has to run. The length of the lease will quite often be calculated from a different date to that which appears on the front page. If you are taking the grant of a new lease, how long is it for? Consider what is to happen when the lease expires. The landlord may not want to grant a new lease or he may demand a rent greater than you can afford. Check whether or not you will have the protection of Part II of the Landlord & Tenant Act 1954 (see 11 below).

2. What is the current rent? Is it likely to go up?

Under most leases, rent is liable for review every three/five years. It is important to check when it was last reviewed. You don't want to find six months after you move in that your rent is due for review. In view of the length of time between reviews your landlord could be looking for a substantial increase. Remember, rents normally only ever go up, they don't come down! If you are taking the grant of a new lease check how often your rent will be reviewed.

3. Who is responsible for keeping the property in repair?

Normally it's YOU. Check what your repairing obligations under the lease are. If your lease is only for a short period, beware of clauses which make you responsible for structural repairs. If you have a lease for only two or three years, you don't want to have to spend £20,000 on a new roof. Even if you are not responsible for repairs is the landlord? You will still have to pay the rent notwithstanding the premises become unusable due to a hole in the roof.

Premises can be in a poor state when you take them over. If it is a new lease, is the landlord expecting you to put the premises into a good state of repair? If the lease only has a short time to run does the landlord plan to serve a schedule of dilapidations? This is a list of all the repairs he expects the tenant to make before he takes the premises back.

4. What is service charge?

You may move into premises that form part of a larger building. In which event the landlord might retain liability to repair the structure of the building. In such circumstances you could be obliged to contribute towards the cost of maintaining the building. This is normally called service charge. If this is the case, make sure you consider the state of repair of the building, not just the part you are acquiring. If your lease is only for a short period of time, make sure you don't become liable to pay towards major repairs you won't get the benefit of.

5. What if I want to change the use of the premises?

If you buy a hairdressers, but want to open a chip shop, then you will need the landlords permission to change the use. The landlord is normally not obliged to give you this. (You may also need planning permission which we will discuss below.)

Be careful that the use clause in your lease is not too narrowly drawn. For instance, if your lease states the property can only be used for the sale of tropical fish, that means you can only sell the premises to someone who wants to sell tropical fish. That may be OK if you are disposing of your business as a going concern, but if you just want to dispose of the premises, it limits the potential purchasers.

6. I want to carry out some building works to the premises. Whose consent do I need?

You will need the landlord's and you may need planning permission. If any structural work is necessary you will also need building regulation consent. Show the plans and specifications of what you want to do to the landlord as soon as you can. Remember, he is under no obligation to agree.

7. I want to put in a new shop front and sign. Whose permission do I need?

A new shop front is classed as building works, see 6 above. You will also need the landlord's consent on the size and design of any external signage. Depending on the kind of sign, you may also need planning permission.

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8. Do I need the landlord's consent before buying the property

Unless you are dealing directly with the landlord (see 10 below) you will have to secure his written consent before taking on a lease from the existing tenant. Even if money is not being paid for the lease itself you still need the landlord's written permission to take the lease over. Purchasing a lease or even occupying the premises without the landlord's consent can result in the lease being forfeited. If you go into possession before you have consent you do so at your peril!

Before giving his consent the landlord will need to be satisfied that you can meet the rent and other liabilities under the lease. You need to be able to produce a bank reference and two other professional/trade references which should confirm that:

- You can pay the rent.
- You will be a good tenant.
- You will be able to discharge any other liabilities under the lease.

If you cannot produce these, then there may be problems in getting the landlord's consent. If this is the case then you could consider asking a third party who can produce such references to stand as a guarantor, or agree to enter into a rental deposit

9. What is a rental deposit?

This is where you deposit between three and six months rent with your landlord as security against you not being able to pay the rent or committing other breaches of the lease. You should consider carefully the basis upon which this sum is returnable to you.

10. What should I do if the landlord is not the freeholder?

When dealing with a landlord it is important to check whether or not he owns the freehold or just has a lease himself. If your landlord only has a lease then he may need the consent of his landlord (this person is known as the superior landlord) before he can grant a lease to you, or consent to you taking over a lease from the current tenant. If this is not obtained then the superior landlord can take proceedings to have your lease terminated.

11. What happens when my lease comes to an end (Part II of the Landlord & Tenant Act 1954)?

All leases of business premises for more than six months are entitled to the protection of this Act, unless a court order has been made specifically excluding its protection. With certain exceptions, the Act gives you a right to a new lease when your existing one expires. The protection of the Act can be very important when it comes to discussing rent and other terms in your new lease.

12. When do I need Planning Permission?

The mere fact that premises are being used for a particular purpose, or that a landlord agrees to grant you a lease to use premises for a particular purpose does not mean that such use is lawful. Valid planning permission must exist for any use to which premises are put. If it does not, then you can be prosecuted by the local authority.

13. They say I have to pay their and the landlord's legal fees, is this right?

No, is the simple answer. These are all matters for negotiation. The outgoing tenant should normally pick up the landlord's legal fees.

14. Should I have a survey?

Yes, yes, and yes again. Repairs are expensive. Your survey should let you know what you are letting yourself in for. A surveyor can also advise you whether or not the rent you are going to pay is reasonable.

15. Do the premises have gas, water, and electricity?

Don't take this for granted. Look for yourself as to what services are connected or ask your surveyor to check. Make sure they are in working order. What rights do you have to use any communal toilets in the building?

16. Anything else I should think of? (Delivery, access, fire escape etc.)

Can you park a delivery van outside the premises or is it about to become a red route? Your local search should tell you. There may be an access road leading to the back of your premises but are you entitled to use it? The lease should tell you. How do people escape from your premises in the event of an emergency? A fire escape may exist but do you need permission to use it? See your lease.

17. Getting it right

When starting up in business renting premises to trade from is going to be one of your biggest overheads. With a little forethought you can get it right.

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