

## Lease Negotiation for Tenants

Lease negotiation is about getting the best deal you can with a Landlord or their agent or surveyor. Don't just accept what you're offered. Always try and negotiate the best deal with a Landlord or their agent.

This fact sheet sets out some of the things you should think about when negotiating a lease of commercial premises.



### Rent

Make sure you don't just accept the Landlord's suggested rent for the premises, even if this is stated to be the market rent. You are advised to obtain your own valuation using qualified Chartered Surveyor.

### Rent Free

Ask for a Rent Free period at the start of the Lease to cover the cost of any fitting out, decoration, repair or other set up works required.

### Service Charge

You may be required to pay a Service Charge, which is a contribution towards the costs incurred by the Landlord in repairing, maintaining and cleaning external, structural and common parts of a building.

You should try to agree a cap - a ceiling above which your contribution will not go. Fixing your liability in this way allows you to control your costs as you will know in advance the maximum Service Charge payment you might be required to pay.

### Business Rates

Understanding the costs involved in occupying commercial premises is important. Go to Valuation Office website to check the Rateable Value for the premises and seek advice as to what reliefs or concessions your organisation might be entitled to.

### Stamp Duty

If your rent is above a certain threshold, you may have to pay Stamp Duty. Your solicitor will advise you if it is payable and calculate the sums due but you may want to consider Stamp Duty early on in your planning as it could be a you may need to budget for. Go to the HMRC website for more information on Stamp Duty.

### VAT

Make sure you know the position regarding the charging of VAT on the Rent payable.

### Rent Reviews

Commonly rent reviews to market rental value take place every 3 or 5 years and are generally upwards only. This means that the rent will either stay the same or increase at rent review. It will

not go down – even in a market where the rental value of the property may have fallen. In some (albeit few) circumstances, it might be possible to agree upward or downward reviews. Sometimes, rents are increased at rent review by reference to Retail Price Index (RPI), whereby the rent will rise in line with inflation. RPI reviews commonly take place more frequently (usually annually). Rent review clauses are usually heavily weighted in favour of the Landlord and should be looked at closely by your surveyor or solicitor.

## **Planning Use**

Make sure the actual property has the right planning permission for your proposed use. The lease will generally tell you what you are able to use the property for, not what the planning use for the property actually is.

## **Break Clause**

Break clauses allow flexibility for either or both parties. Be sure to keep any break clause agreed simple and avoid agreeing a break clause with conditions you may be unable to fulfil.

If the Landlord does not agree to the inclusion of a break clause in the lease then be sure to have the ability to assign or sublet the Lease to a 3rd party, and ensure the terms of the alienation clauses are not too onerous.

## **Landlord and Tenant Act 1954**

Unless you agree otherwise, your business lease (lease of commercial premises) will have the benefit of security of tenure. This means that at the end of the Lease, unless your Landlord is able to satisfy certain conditions for not doing so, you are entitled to a new Lease on similar terms.

Make sure that if this protection is waived, by excluding the lease from the security of tenure provisions of the Landlord and Tenant Act 1954, you fully understand the implications for your business.

## **Schedule of Condition**

It is advisable to agree a photographic Schedule of Condition which must be referred to in and annexed to the Lease. This will serve to limit your liability for repairing the property and to show how the premises are required to be handed back to the Landlord at the end of the Lease Term.

## **Alterations and Signage**

You will need your Landlord's consent to make any changes including installing signage to the building you are about to lease. Make sure that you discuss the works you propose with your prospective Landlord and more importantly provide written details which might include drawings, plans, specifications and method statements at an early stage so that in principle approvals can be given. Doing this removes the risk of not getting the consents necessary for the works you need to undertake to make the property right for your business.

Bear in mind that the works you wish to undertake may also require Planning Permission, Listed Building Consent or Building Regulations approval.

## **Quarterly v. Monthly**

Rent is commonly paid quarterly in advance on the standard English Quarter Days (25 March, 24 June, 29 September and 25 December). Consider asking to pay rent monthly in advance instead if this might assist your cashflow.

## **Landlord's legal costs**

You should not agree to pay the Landlord's legal costs. This is not standard practice. It is common for each party to bear their own costs.

## Instruct a Surveyor to negotiate Heads of Terms and the Lease

Heads of Terms are important. Whilst they are not intended to be legally binding, they do set out the matters agreed between the parties and which will form the main points within the Lease. You should instruct a Surveyor to negotiate and agree your Heads of Terms and Lease. Your Surveyor will be looking to obtain the best possible deal for you and ensure that the Lease you enter into is not an onerous one.

## Resources

**Ethical Property Foundation** - <http://www.ethicalproperty.org.uk/>

The Ethical Property foundation exists to provide independent property advice to charities, community groups and other non-profits.

**Locality** - <http://locality.org.uk/>

Locality have information about neighbourhood planning and bidding for community assets

**Community Matters** - [www.communitymatters.org.uk/](http://www.communitymatters.org.uk/)

Champions voluntary and community action at a neighbourhood level. They have advice sheets and also services through which charities and community groups can save money on utility bills and insurance.

## Support

If you would like any support with premises or any other issues facing your organisation, please contact the Development Team at Community Southwark: [development@communitysouthwark.org](mailto:development@communitysouthwark.org) or 020 7358 7020.

*This factsheet was developed by Goodlands Commercial Property Management (<http://www.glsurveyors.co.uk/>) for Community Southwark in July 2013.*

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*You must not rely on the information contained within this Fact Sheet as an alternative to legal or surveyor's advice. If you have any specific questions about a specific property matter you should consult your surveyor or solicitor for advice.*