

# NEGOTIATING COMMERCIAL LEASES

Negotiating a commercial lease can be a daunting task. Commercial leases represent a considerable, long-term financial commitment to many businesses and if you do not get it right your business may suffer as a consequence. So where do you start and how can you ensure that your lease contains the right provisions for you?

## **Premises:**

A physical inspection of the premises is vital. You have to make sure that the area being let to you is consistent with your requirements and expectations. If anything is unclear then ask the landlord or agent, who should be more than willing to provide you with further information. Remember, once the lease is completed you will be responsible for maintaining the premises. If you are letting part of a building be clear about the extent of your obligations. If the premises are not in good order you may want to negotiate that you will not be liable to carry out certain repairs.

## **Term:**

How long will you require the lease? If the term being offered by the landlord is longer than you need, or there is still a risk that the premises will not “work for you” consider requesting the right to terminate the lease at an earlier date to give you some flexibility – what is commonly referred to as a “break option”.

## **Break clauses:**

If you negotiate a break option try to ensure that it is not made conditional, other than for full payment of the rent. If this is not possible make sure any conditions are clear and can be complied with. A condition requiring all the obligations under the lease to be performed before a break can be exercised is to be avoided as this usually stops the option being exercised.

## **Rights granted and reserved:**

How do you access the premises? Does this allow for parking or delivery vehicles? Does a third party require access over the premises? If it is unclear then ask the landlord to clarify, as limited access may make the premises unsuitable.

## **Rental/Service Charge/Insurance rent:**

In addition to rent, leases commonly require you to contribute towards the costs incurred by the landlord to insure the building, and possibly its maintenance. Maintenance charges are normally uncapped, unless a cap agreement is in place; it is in your interests to negotiate one. Confirm the extent of any extra cost before agreeing a rental figure. Enquire whether a rent that includes these amounts or caps can be agreed to give certainty to your rental payments. Are you planning improvements or alterations? Ask about the availability of appropriate rent-free periods.

## **Alterations:**

Consider any alterations that may be required before you can occupy the premises. Obtain specifications and agree these with the landlord as part of the lease negotiations. If you leave this until after the lease is granted this will not only slow down the works that need to be done, but you may also be asked to pay the landlord's costs for approving the alterations.

## **Transmission of the tenancy/subletting:**

Check the restrictions that will apply on your disposal of the lease. Normally this can be achieved by either assigning/transferring your lease, or by subletting to a third party. Check the likely restrictions that will apply and agree specific arrangements, such as the right to sublet part of the premises if required.

## **Rental review:**

The landlord may ask for the rent to be reviewed during the tenancy. Ask how often reviews will take place and how the new rent will be calculated. Most leases traditionally provide for upwards rent reviews so no reduction would apply if market rents fall. If you are have concerns that this may make the premises unaffordable, consider negotiating a right to terminate the lease immediately after the rent review, or even fixed increases.

## **Repair:**

Be specific about what you will be required to repair. A survey by a qualified building surveyor of the premises is always advisable to establish whether there are likely to be any major areas of expenditure during the tenancy. Consider a condition report or schedule to limit the scope of your repairing obligations. At the very least take and keep carefully pictures of the premises before you occupy as evidence of its state and condition.

## **Security:**

After disclosure of your financial position the landlord may request either a rent deposit or a guarantee to secure the performance of your obligations under lease. In both cases you consider the length of time this security should be in place and try to negotiate the return of deposits, or release of guarantees at an agreed point if your business performs well.

This leaflet outlines just some of the main provisions that should be considered in negotiating a new lease. More specific provisions may apply to individual transactions.

It's always important to make sure your lease is right for your business, but in the current economic climate, perhaps even more so. It could make a significant difference to your bottom line.

At Carter Bells we specialise in assisting businesses large and small to negotiate and complete suitable commercial lettings. We have excellent connections with local agents and surveyors that allow us to offer a virtual 'one stop shop' solution. You can get on with your business, knowing that the administration and negotiations are in the safest hands possible.

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