



Can I transfer my business lease?

This is a question frequently asked by Tenants and one which can generally only be answered by a careful review of the lease.

If the lease does not contain any written restriction upon transfer or assignment, then you are free to transfer it to a new Tenant subject to complying with any terms in the lease requiring the Landlord to be notified of any changes of Tenant and any registration requirements at the Land Registry.

Most leases, however, contain some form of restriction so how should they be interpreted?

Unless the lease contains a complete bar against transferring or assigning the Property, (when no transfer is permitted) then usually the consent of the Landlord will be required and this is given by way of formal licence deed. The Landlord's legal costs associated with the preparation of the Licence are normally payable by the Tenant unless they are passed on to the transferee as part of the sale negotiations.

If the Lease says that the Property cannot be transferred or assigned without the consent of the Landlord then the Landlord is required by law not to unreasonably withhold consent.

What obligations does my Landlord have to consider my application?

Once an application is made for consent, then the Landlord must grant consent unless it is reasonable not to do so and must do this within a reasonable amount of time, save in situations where they have an absolute right to refuse consent.

The Landlord must only impose conditions that are reasonable.

What is my lease likely to contain?

Most modern leases will set out circumstances in which the Landlord can withhold consent and conditions that the Landlord can impose when granting consent.

A circumstance that has to be satisfied might be that all the current rent, insurance rent and service charge has to be paid up to the date of the proposed transfer.

Conditions frequently imposed by the Landlord include the requirement for a guarantor; for example in the case of an assignment to a newly formed company where a director may be asked to act as guarantor.

AGAs

The most common condition imposed on the outgoing Tenant is the requirement for what is known as an “AGA”. An AGA is an Authorised Guarantee Agreement given by the outgoing tenant to guarantee the payment of rent and the observance of the lease obligations by the new Tenant.

AGAs subsist for the period from the date that they are entered into until the date that the new tenant transfers the lease again; or the end of the term of the lease, whichever occurs first, at which point the original tenant is released from further liability.

AGAs cannot be imposed in all situations and are regulated by the terms of the lease itself and most recently have come under additional scrutiny in some legal cases.

This Fact Sheet is for information only and is not intended to be a substitute for legal advice.

For further guidance in dealing with lease transfers and all commercial property matters, please contact our Commercial Property Solicitor, Susan Poole on:

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