

**July 2012**

## **LEASE NEGOTIATIONS**

### **Introduction**

- 1 Leases are complex legal contracts specific to the ownership, occupation and rights in and over land or premises on it. The purpose of this Note is to help local councils identify that there is a due process to follow before legally committing to leases, that main terms should not be agreed and leases should not be executed before professional advice is obtained.
  
- 2 In the case of a lease, the legal principle of caveat emptor (buyer beware), imposes an obligation on a tenant to find out about the premises and to make further enquiries **before** entering into a contract for the grant of a lease or the lease itself. This is important because the landlord is not required to disclose matters which the tenant has knowledge of or ought to have knowledge of (e.g. any physical defects in the premises). Before making a legal binding commitment to enter into a lease, councils are advised to inspect and make thorough enquiries of the premises in question and any adjoining premises to find out if it is suitable for their intended use(s) and if, in the future, they decide to assign or sublet it.
  
- 3 Notwithstanding the use of premises that may be permitted by a prospective landlord and later confirmed in the lease itself, a tenant may not be able to carry out any building or other operations or make a material change in the use of premises without obtaining planning permission. A tenant should be satisfied that planning permission is available for the use intended for the premises.
  
- 4 If a council inspects premises (and any adjoining premises) and is aware of any planning law restrictions at the outset, it will be better placed to assess any potential problems and communicate these concerns to its professional advisors. Despite the related costs, councils should not enter into leases unless they have first received

advice where appropriate from (i) a professionally qualified surveyor in respect of the physical condition of premises and the state of repair and its market value and (ii) a legal professional. Agreeing to the main terms of a lease or executing a lease without careful consideration and without taking professional legal advice can have disastrous consequences for a council. The expenditure incurred by councils in seeking professional advice before legally committing to leases may prevent the need to obtain more expensive legal advice occasioned by disputes during and at the expiry of the lease.

- 5 Local councils sometimes ask if there are template lease documents available to adapt as necessary for their own use. NALC does not provide any. It is not advisable for those who are not legally qualified to simply adapt templates or other leases because lease terms, some of which are standard and some of which are not, require an understanding of landlord and tenant law. Template leases, by their nature, cannot be specific to a particular premises or reflect the needs of the landlord and tenant in every situation.
  
- 6 The standard and relevant terms in a lease in respect of one particular type of premises (e.g. a village hall or community centre) are unlikely to be the same as the standard and relevant terms of a lease of other types of premises e.g. a playing field, council offices, a parking facility, or a sports facility. In addition, often councils overlook the importance of key terms which feature in all leases, such as the length of the term of the lease, break clauses, permitted use clauses, repairing and insuring obligations, and whether the tenant has security of tenure.
  
- 7 To summarise, local councils as prospective landlords or tenants are recommended to:-
  - inspect the premises (and any adjoining premises) they are interested in;
  - commission a professional survey;
  - consider the effect of any planning permissions regarding its permitted use in planning law terms;
  - seek professional legal advice and
  - understand the meaning and effect of lease terms.

## **Heads of terms and contracts for a disposition of land**

8. Whilst councils are advised to obtain professional advice before agreeing to terms and executing leases, it is possible for councils to handle some of the preliminary negotiations for a lease. Heads of terms (usually written) are used by parties to confirm the basic deal between the parties. They therefore save time and some expenditure incurred in the legal advice connected with the drafting and execution of a lease. The parties use heads of terms to agree and record important matters in principle, the overall scope of a proposed lease and any commercial and key practical matters. Some of these may not seem important at the time but may affect the tenant's ability to undertake or manage its activities and business at the premises.
9. It is important that the written heads of terms document should clearly state that it is not legally binding. If the heads of terms document does not include a relevant statement (such as 'subject to contract') to confirm the heads of terms are not binding, and the parties then sign to agree all the terms included, the heads of term may create a binding contract (i.e. if there is an offer, and acceptance, consideration and an intention to create legal relations). If the heads of terms confirm that it is 'subject to contract', this should be sufficient to prevent a contract from arising.
10. Even though heads of terms should not be legally binding, parties need to take care that the terms recorded therein are accurate. The terms are supposed to reflect important matters which parties have considered and already agreed in principle. It may be difficult for a party to renege on a point if it has been agreed and recorded in the heads of terms.
11. Subject to agreeing heads of terms, usually parties proceed directly to the lease. It is not essential for parties to enter into an agreement or a contract for the grant of a lease before they enter into the lease itself. Agreements for a lease may be necessary if the landlord is undertaking works at the premises, or if the tenant wants early occupation to commence fitting out a premises, or is applying for planning permission.
12. The main matters usually recorded in the heads of terms are highlighted in **bold italics** below. Some additional commentary has been given to highlight and explain related matters which may become problematic if such heads of terms and subsequently the

lease terms are not understood, agreed or well drafted. Such commentary is not exhaustive and are matters upon which a council's retained solicitors are qualified to further advise.

a) ***The correct names, identity and contact details of the landlord and tenant.***

This is especially important if one party is an unincorporated body. Each party should ensure that the other is the entity that it claims to be. In addition, the landlord and any superior landlord should be identified.

Contact details by post, phone, fax and email should be given, as well as a contact name and title (e.g. director, treasurer, Chairman, clerk). If a party is a company, a correspondence address (if this is different to the company's registered address) should be provided.

b) ***The premises address***

Councils should have good knowledge and understanding of the premises. Its boundaries together with floor area/measured space, all means of access, and areas shared with others/ common parts should be clearly identified and marked on a plan.

For a lease in respect of only part of a building, the lease should specify which parts of the premises are being demised. This also affects repairing obligations in the lease. Parties will need to consider walls, floors and ceilings, window frames and windows. For example, in the absence of a provision in the lease to the contrary, a demise of part of a building divided horizontally or vertically will usually include the external walls of the parts and any external fixture fixed to the walls. Also in the absence of a provision in the lease to the contrary, where a building is divided vertically, a demise of part will usually include the roof of that part.

The lease must accurately describe the exact extent of the demised premises and where appropriate refer to scaled plans. Too often plans are inaccurate and this can cause problems later such as repairing, boundary and access disputes. In addition, councils should be aware that the Land Registry requires accurate scale plans on all leases submitted for registration (i.e. any leases including assignments with a term of 7 years or more). If a tenant enters into a lease with an inaccurate plan, the tenant may need to pay the landlord's legal and surveyor's costs for approving a revised lease plan before its leasehold title can be registered. Chartered surveyors or expert

plan drawing consultancies may be employed, at modest cost, to produce an accurate plan before the lease is entered into.

**c) *Rent per annum***

The parties should agree when rent is payable e.g. monthly or quarterly.

The term 'rent' may have different meanings depending on its exact definition in the lease. It may or may not include service charge payments and insurance premiums. It may also mean not only the original rent but the revised rent payable pursuant to a rent review clause and any interim rent payable when a business tenancy governed by the Landlord and Tenant Act 1954 (the 1954 Act) continues after the expiry of its contractual term.

**d) *Any rent free periods or other incentives***

**e) *Type of lease***

This could be a head lease or a sub-lease. A tenant will be bound by restrictions in a superior leasehold or freehold title, even if the freehold title has not been deduced. A tenant should press for details of any superior title. Where a sub-lease is proposed, the proposed sub-tenant can require his landlord (also a tenant) to produce his lease (or sub-lease) and any assignment of it during the preceding 15 years, but will not be entitled to see the superior lease or freehold title.

As well as enquiries as to any head leases, enquiries should be made about any deeds or other agreements supplemental to the lease.

**f) *Landlord's initial works (including timing)***

Usually relevant if the parties are not proceeding direct to the lease.

**g) *Tenant's initial works (including timing)***

Usually relevant if the parties are not proceeding direct to the lease.

**h) *Guarantor (if any)***

**i) *Term of lease and commencement date***

Subject to where the tenant enjoys security of tenure to remain in possession of the premises and to renew the lease at the end of the contractual term, the term may be fixed (e.g. 25 years) or continued/held over after the expiry of the fixed term (e.g. for a term of 75 years and from year to year thereafter).

**j) *Options to break and extend or renew lease***

Break clauses permit a party to terminate the lease sometime before the expiry of the contractual term. The notice periods for break and renewal options should be specified.

The only reasonable pre-conditions to tenants exercising break clauses are that they have performed their covenants (e.g. paid rent and other payments due), give up occupation and leave no sub-leases. Disputes about the condition of the premises, what has to be left behind or removed, can be settled later as would be the case at the expiry of the original lease term.

**k) *Landlord and Tenant Act 1954***

It is desirable for a tenant of a business tenancy (which may include activity not necessarily a business or commercial activity carried on by a body of persons, whether corporate or not) to have the protections conferred by the 1954 Act. Leases protected by the 1954 Act do not always expressly state this.

Tenants of leases of a business premises, enjoy security of tenure. This means that the lease does not automatically expire at the end of the lease term and a periodic lease cannot be ended by the service of a notice to quit by the landlord. The tenant is entitled to remain in possession of the lease on the same terms as the current lease and either the landlord or the tenant can serve a notice on the other requesting a new lease and setting out the proposed terms. Tenants have a number of rights including a right to compensation if they have to vacate the premises in certain circumstances.

The 1954 Act excludes certain types of leases from protection. Leases excluded from protection include farm business tenancies (see Legal Topic Note 50) and fixed term tenancies for 6 months or less. Licences (see Legal Topic Note 48), are also excluded from the protection of the 1954 Act. Sometimes freeholders and leaseholders prefer

to enter into licences rather than leases because licences are not protected by the 1954 Act.

In some situations it is not appropriate for the tenant to have the protection of security of tenure afforded by the 1954 Act. In early negotiations and in the heads of terms, the landlord should confirm this.

If a landlord wants to contract out of a lease which would ordinarily be protected by the 1954 Act, he must serve a prescribed form on the tenant which warns the tenant that he is agreeing to a lease without security of tenure and which advises him to obtain professional advice. The tenant must then simply sign and return a prescribed form which contains a declaration accepting that the lease is excluded from the protection of the 1954 Act. In the case of any such agreement to exclude security of tenure, the declaration by the tenant must be made before the tenant enters into the lease or becomes contractually bound to do so.

The provisions of the 1954 Act are fully explained in Legal Topic Note 49.

### **1) *Rights***

This includes any rights (including any easements) relating to the premises which the tenant expects or needs in order to use the premises as he wishes. Usually this includes the right to use pipes (which when defined in a lease normally includes all pipes, sewers, drains, watercourses, wires, cables and other conducting media) in other parts of the premises, not being leased, in order to run services to and from the premises being leased. The landlord may reserve the right to use pipes passing through the tenant's premises. Other important rights include rights of access to and from the premises, use of common parts, remote storage areas, signage, shared amenities such as toilets and kitchens, parking facilities (confirmed by number and plan if relevant).

Local councils, as tenants, often overlook the need to confirm rights of access to the premises including those that extend to the public highway. If access ways are shared with others, then the cost of the shared maintenance needs to be agreed.

Landlords usually impose extensive exceptions and reservations of rights over the premises especially if he owns the adjoining premises. If the lease contains rights of

way that are granted over the landlord's title, it will be necessary for the tenant to register them in order to bind the landlord's successors in title.

#### **m) *Rent review timescales and method***

Ideally, a lease should permit both the landlord and the tenant to start the rent review process which may result in the rent being increased or decreased. If the landlord is not prepared to permit a downward rent review, the tenant may want to insist that the lease includes a break option exercisable by the tenant. The lease should not permit the landlord to simply change the rent as and when he likes. Usually, however a lease contains provisions which permit the landlord alone to change the rent.

The rules by which the rent may be changed should be clear and understandable. When rent reviews may occur and by whom they can be triggered should be clear.

The rent review clauses will set out many different matters. The basis of a rent review should be the market rent unless stated otherwise e.g. increases by a fixed amount. If rent increases are linked to a particular price index (e.g. Consumer Price Index) the index should be published by an independent authoritative source.

The rent review clauses in a lease may also stipulate a time-table for determining the new rent and procedural steps. Typically a landlord will be required to give notice of a proposed rent increase before a given date (the review date) and the tenant will be required to respond (giving a counter-notice) within a defined period after receipt of the landlord's proposal. If the parties do not agree the revised rent, the lease should contain provisions for settling any disagreement regarding any new rent. Disputes should be referred to an independent expert or arbitrator to settle, whereby the costs of the dispute or arbitration are shared by the parties.

Frequently, landlords and tenants fail to comply with the timescales set out in the lease and the courts have been asked to rule whether a failure to comply with the strict requirements of the lease invalidates the rent review provisions.

Many contracts (including leases) state that an act should be done at a time set out in the contract. In some cases it is essential that the act is done at the time specified in the contract and at no earlier or later time. Where an act must take place on the precise date (or time) specified in a contract, it is said that "time is of the essence."

It is open to the parties to a lease to stipulate that time is to be of the essence in respect of the giving of rent review notices but, in the absence of such a stipulation, it will be assumed that time is not of the essence. If time is not of the essence either party may take a step even though the time for doing so (as set out in the lease) has expired. This is the effect of the House of Lords decision in *United Scientific Holdings Ltd. V. Burnley Borough Council* [1978] AC 904.

It was originally thought that unreasonable delay on the part of a landlord might deprive him of the rent review provisions in the lease. In the *United* case Lord Salmon said:

*“... Any unreasonable delay caused by the landlord and which is to the tenant’s prejudice would prevent the rent being revised after the review date.”*

Unfortunately, however, later decisions have moved away from the view in the *United* case. When a landlord had delayed serving the rent review notice by nearly 4 years as were the facts in the case of *Amherst v James Walker Goldsmith and Silversmith Ltd (No.2)* [1983] 2 All ER 1067, the Court of Appeal said:

*“... There was no ground for reading into the lease an implied term that if the landlord did not serve a rent assessment notice within the time-limit set out in the review clause he had to do so within a reasonable time thereafter.... Even delay plus hardship to the tenant would not disentitle the landlord to his right to a review unless the combination amounted to an estoppel.”*

In their textbook “A Handbook of Rent Review” the authors (Kirk Reynolds QC and Guy Fetherstonhaugh QC) state at page 370:

*“... It must now be regarded as extremely doubtful whether, in the absence of circumstances giving rise to an estoppel, delay causing hardship or prejudice to the tenant will result in the right to review being lost or curtailed.”*

#### **n) Assigning, subletting and sharing**

Unless a lease contains restrictions, the tenant will be free to deal with his leasehold interest in any way he wants. He may assign (transfer by deed) his existing leasehold

interest in the whole premises, or grant a (new) sub-lease of the whole or part of the premises, or part with possession of a whole or part of the premises by licence. However it is common and reasonable for a landlord to impose some restrictions. The parties should aim for a fair balance between their competing interests.

For a landlord, close control over assignment is essential otherwise the premises may be occupied by an undesirable tenant, used for purposes not acceptable, and the value of the landlord's reversionary interest may be reduced. If the landlord owns adjoining premises, then for estate management purposes, he may want to exercise control over the premises by absolutely prohibiting assignment or restricting assignment without first obtaining his written consent not to be unreasonably withheld or delayed. A prohibition or restriction on an assignment does not mean that the lease cannot permit a sub-lease or a sharing of part of the premises by licence.

For a tenant, a lease may become a burden if he no longer has any use for the premises or is in financial difficulty and cannot, for example, afford the rent and repairing obligations. A lease should allow a tenant to assign the whole of the premises with the landlord's written consent not to be unreasonably withheld or delayed. Landlords sometimes require tenants to guarantee a lease once it has been assigned to a third party. This form of guarantee is known as an Authorised Guarantee Agreement (AGA). An AGA has the effect of making the original tenant responsible, as guarantor, for the performance of the lease obligations until his assignee assigns. If the landlord insists on an AGA, this should only be necessary if at the date of assignment, the proposed assignee together with any proposed guarantor is of lower financial standing.

If the lease permits sub-letting, it is common for landlords to require the sub-lease to be granted on similar terms as the tenant's lease. It is usual for landlords to impose lease terms which require any sub-leases to be excluded from the protection of the 1954 Act. The lease may further limit and restrict the sub-lease terms in so far as they relate to permitted use, rent and type of sub-tenant.

A restriction against the tenant granting a sub-lease will not prevent the tenant from granting a licence to others to use or share the premises. This may be desirable for tenants of premises such as a village hall, recreational field, sports facility.

If a tenant grants a sub-lease or shares, by grant of a licence, part or all of the premises with another, the sub-lease or licence should expire on a date before the

tenant's right to break the lease and should not grant any rights to occupy the premises after the term has expired.

**o) *Service charge provisions and any caps***

During negotiations for a lease, the landlord should provide a tenant an estimate (or actual budgets) for service charges, insurance payments and other outgoings that the tenant is obliged to pay under the lease. A landlord should also disclose to the tenant known irregular expenditure (e.g. improvements to common parts and shared facilities) which would have a significant effect on the amount of service charges payable by the tenant. If the landlord is not forthcoming with this information, the tenant should ask for it to be provided.

**p) *Repairing obligations***

Ideally, unless expressly stated otherwise in the heads of terms and lease, a tenant should only be obliged to give the premises back at the end of the lease in the same condition that the premises was in at the start of the lease.

A tenant's repairing obligations under a lease should be appropriate to the length of the lease and the condition of the premises as at the date the lease commenced. If a lease requires a tenant to pay service charges in addition to rent, the tenant will indirectly be responsible for the cost of repairs by the service charges levied on him.

Repairing obligations should only be agreed **after** a professional survey of the premises has been obtained. The repairing covenant imposed on a tenant in any lease is **fundamental**. It will either be a full repairing covenant or may be subject to a schedule of condition, ideally prepared by a professionally qualified surveyor prior to the grant of a lease.

If a tenant is subject to a full repairing covenant, he may, at the expiry or termination of the lease, be obliged to return the premises to the landlord in a better condition and state of repair than the premises was in at the commencement of the lease. With a schedule of condition, the idea is that the parties agree the condition of the property as at the commencement of the lease term and are aware of any major repairs which are required. The advantage of a lease having a schedule of condition is that, at the end of the lease, the tenant will not have to return the premises back to the landlord in a better condition than it was in when he took the lease.

It is sometimes not realistic, for reasons of cost, to expect a tenant to commission a professional survey of a premises which confirms the condition of a premises before or when the lease term started. This will be more relevant in respect of a short term lease. If a survey is not possible, it is worth the tenant taking photographs which evidence the condition of the premises when the lease term commenced. The photographs should be dated and witnessed and kept with the lease.

Even with an agreed schedule of condition in place/ annexed to a lease, protracted and expensive disputes between the landlord and tenant as to the condition of the premises are sometimes inevitable.

#### **q) Alterations**

In addition to specifying or limiting the use of the premises (permitted user clause) a landlord may also restrict any alterations the tenant wishes to make in order to meet its needs for the premises.

If a lease contains an absolute covenant against the making of any alterations or against the making of a particular type of alteration, the landlord will have total control over the tenant. This is undesirable for the tenant who may want to undertake alterations which would improve the premises for his use.

A landlord's control over alterations should not be more restrictive than is necessary to maintain the physical state, character and appearance and reputation of the premises, to maintain the rental value of the premises, and at the time of the proposed alteration, the value of the landlord's interest in the premises and in any adjoining premises belonging to the landlord.

It is common for a lease to require a landlord to give his written consent to proposed external or structural alterations (e.g. to install internal partition walls) or improvements which should not be unreasonably withheld or delayed. These provisions are important for a tenant to ensure he has sufficient flexibility to adapt or alter the premises to suit his needs or the needs of the business/ activity undertaken at the premises. The lease may stipulate that a tenant does not need the landlord's prior written consent for internal non structural alterations but require the tenant to notify him of the same.

In deciding whether an alteration by the tenant constitutes an improvement, the matter is to be viewed from the tenant's perspective. Provided that the alteration increased the value or usefulness of the premises from the tenant's point of view, it is irrelevant that the alterations will inevitably lead to a decrease on the value of the landlord's reversionary interest.

A lease may require the tenant to remove any permitted alterations and make good at the end of the lease, unless unreasonable to do so. A landlord should notify the tenant of such obligations at least 6 months before the termination date.

#### **r) *Permitted User clauses***

This confirms the permitted use for the premises. Examples of common permitted user clauses in local council leases include for 'sports and recreational purposes', 'a place for public meetings', and 'office space'. Other familiar permitted user clauses for local council leases include for the 'benefit of the community' or 'for recreational purposes'. Recreational purposes may or may not include sports. If a council regards the permitted user clause as ambiguous in meaning or believes that there is a risk that it may not permit them to use the premises in the way it proposes, then the user clause should be made clearer in meaning, reducing the risk of there being a future breach of this covenant.

A landlord may be prepared to broadly stipulate the type of use to be permitted at the premises. A very narrow permitted use would give a tenant no flexibility in how the premises is used. Although it may favour a tenant on rent review, the tenant's attempts to dispose of the premises at some time in the future by assignment or sub-lease to a party who wants to undertake different activities and business at the premises may be hampered.

Sometimes permitted use lease clauses are linked to a particular or similar use as is defined by the Town and Country Planning Use Classes Order 1987 (SI 1987/764) (as amended). The 1987 Order (as amended) removes the need to obtain planning permission where there is a change of use within specified uses as defined. For example, with reference to the schedule to the 1987 Order (as amended), class B1 use is office use other than an office for financial and professional services but a lease may qualify such office use for the business of a solicitor, accountant or architect.

### **s) Insurance**

If the landlord is insuring the premises, the insurance policy should be obtained from reputable insurers and its terms should be reasonable, fair and represent value for money. The tenant should ask for a copy of the policy before legally committing to the lease.

The lease should confirm that the landlord's policy is to be used to repair or rebuild/reinstate the premises unless the policy is invalidated by the tenant's deliberate acts.

If premises are damaged by an insured or uninsured risk, other than when caused by the tenant's deliberate acts, the lease should confirm that the rent will be suspended. If premises are damaged by an uninsured risk so as to prevent occupation, the tenant should be permitted to terminate the lease unless the landlord rebuilds the premises at his own cost.

The tenant is expected to arrange insurance cover in respect of all activities it undertakes at the premises e.g. public liability insurance.

13. A model heads of terms is available under the Code for Leasing Business Premises in England and Wales 2007 (the 2007 Code). The 2007 Code is endorsed by the Association of British Insurers, British Council for Offices, British Property Federation, British Retail Consortium, Confederation of British Industry, Communities and Local Government, CoreNet Global, the Forum of Private Business, Federation of Small Businesses, Investment Property Forum, The Law Society of England and Wales, the Royal Institution of Chartered Surveyors and the Welsh Assembly Government. Councils should note that the 2007 Code model heads of terms is copyrighted to the joint working group on Commercial Leases 2007 and cannot be used for commercial purposes.
14. The 2007 Code, model heads of term, guidance and information (such as an occupier's guide and a landlord guide) can be accessed via <http://www.leasingbusinesspremises.co.uk/index.html>. The guidance available on this website is very useful but is not to be regarded as a substitute for professional legal advice for a particular situation.

15. Although this Note is intended to help local councils understand and better engage in lease negotiations, it is no substitute for professional legal advice on a particular lease.
  
16. Annexed to this Note is a glossary of some of the common legal terms which feature in property transactions including leases. Some terms are specific to commercial property transactions.

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
35	Contracts	Explains the components which create a contract.
41	The responsibilities of councils as landowners	Sets out the basic statutory and common law duties and liabilities arising from ownership of land (including leasehold ownership).
45	Disposal and appropriation of land by local councils	Explains the statutory duties which councils are subject to when leasing premises.
46	Registered land	Sets out the benefits of registering leasehold ownership with the Land Registry.
47	Easements	Explains the nature and creation of easements.
48	The difference between Leases and Licences	Describes the form, effect and consequences of licences.
49	Business Tenancies	Explains the Landlord and Tenant Act 1954.
50	The Agricultural Tenancies Act 1995	Confirms that it is a criminal offence for an unqualified person to prepare a farm business tenancy.
62	Planning control over agricultural land and buildings	Considers planning concerns relating to premises used for agriculture.
68	Negligence	Confirms the need for tenants and occupiers of premises to have sufficient insurance cover (e.g. public liability) in place.
76	Energy Performance requirements	These are relevant in freehold and leasehold sale transactions and in respect of the occupation of buildings.
82	Compulsory purchase orders	Sets out the procedure for local councils to compulsorily purchase land.

## **ANNEX TO LEGAL TOPIC NOTE 75**

### **Glossary of terms commonly used in leases**

#### **Absolute title**

This is the best of the four classes of title that the Land Registry give to land.

#### **Abstract of title**

A summary of the title deeds and documents which prove title to unregistered land. Nowadays an epitome of title (see below) is normally used.

#### **Acknowledgement and undertaking**

A confirmation contained in a deed that the person named has the right to see a document not in his possession and a promise that the person who has possession of that document will keep it safe.

#### **Additional rent**

A sum payable under a lease (eg service charge payments) which is to be treated as rent, giving the landlord the same remedies as if it were rent.

#### **Adverse Possession**

The occupation of land without the permission of the owner. In certain circumstances after 12 years of such possession (unregistered land) or 10 years in registered land, the occupier may gain title to the land. See also Legal Topic Note 55 - Claiming Ownerless Land.

#### **Adverse rights**

Sometimes used to refer to the rights which someone other than the owner may have over land.

#### **Agreement for sale**

Another name for the contract setting the agreed terms of a sale.

#### **Alienation clause**

Provision in a lease which restricts the tenant's rights to assign or sublet.

#### **Apportionment**

The process of adjusting the purchase price of land to take account of outgoings that affect it. So, in leasehold property, rent and service charges are normally paid in advance, so on completion of the sale the buyer will have to pay to the seller an extra sum equivalent to the payments in advance made by the seller.

#### **Appurtenant**

A right benefiting a piece of land (eg an easement) can be said to be 'appurtenant' to that land. It will pass automatically on the transfer of that land.

#### **Arbitration clause**

A clause in an agreement (eg a lease) requiring disputes to be referred to a third party for resolution in accordance with the Arbitration Acts.

**Arms length**

A transaction between parties who are not associated in any way.

**Assign**

To transfer a right in property over to another. Usually used to signify the transfer of a lease.

**Assignee**

The Person who receives the property being assigned.

**Assignment**

The document by which property is assigned – again usually used in relation to the transfer of leases.

**Assignor**

The person who transfers the property.

**Attestation Clause**

The part of the document containing the signatures of the parties.

**Bailiff**

An officer of the court charged with serving documents and enforcing judgements.

**Banker's Draft**

A cheque drawn by a bank (rather than by a private individual) usually on its own head office. It is generally accepted as the equivalent of cash, although it needs to be paid through the banks' "clearing system" in the same way as any other cheque.

**Beneficial Owner**

The person who is entitled to enjoy the benefit of property (as opposed to a trustee who owns land for the benefit of someone else).

**Benefit (of a covenant)**

The right to enforce compliance with it.

**Body of deed**

The operative part of a deed – as opposed to the recitals.

**Boiler plate clause**

Standard provision included in a legal document.

**Break clause**

Clause in a lease which allows one party to terminate the lease before its normal expiry date.

**Bridleway**

A path or road over which the public have the right to pass on foot or with horses and bicycles, but NOT with vehicles.

**Building Regulation Approval or Consent**

Confirmation that the plans for proposed building work show that it will comply with the Building Regulations. All building work has to comply with prescribed standards and the

local authority is charged with ensuring compliance (although the NHBC will normally undertake such responsibility in relation to a new house to be covered by their structural insurance).

### **Building lease**

Long lease under which the tenant is obliged to carry out some building work on the demised property.

### **Burden (of a covenant)**

The obligation to comply with it.

### **Call option**

An agreement under which a party can, within a defined period, 'call' on (or compel) the other to sell his property.

### **Caution**

Under LRA 1925 a method of protecting a third party right in registered land. Could be entered on the register without the consent of the proprietor. Cautions can no longer be used under LRA 2002, but existing registrations remain effective.

### **Caveat emptor**

Let the buyer beware – emphasising that it is the buyer's responsibility to discover problems with the property, not the seller's to disclose them.

### **Cesser**

The premature ending of a right.

### **Charge**

An interest in land securing the payment of a debt; a mortgage.

### **Chattels**

Items of property other than land e.g. furniture. They will be excluded from the sale of land – unless there are specific provisions in the contract to the contrary.

### **Chief rent**

Used in certain parts of the country to describe a rentcharge.

### **Clear lease**

A lease under which the landlord is under no liability to pay for insurance and repairs i.e. the rental income is "clear" of these obligations.

### **Comfort letter**

A letter under which an assurance is given that the sender will behave in a particular way e.g. that the sender will provide funds for a particular purpose.

### **Common land**

Land over which the inhabitants of a locality can exercise rights e.g. grazing.

**Common parts**

The parts of a development used in common by all the occupiers e.g. the hallway and stairs in a block of flats or the car park in a business park.

**Concurrent lease**

A lease granted to run at the same time as an existing lease. The tenant under the concurrent lease will then become the landlord of the tenant under that existing lease. Sometimes used in flat management schemes.

**Conservation area**

An area of special architectural or historic interest so designated by the local authority in order to preserve or enhance its character or appearance. Special planning rules will apply restricting development in this area.

**Conveyance**

The document used to transfer ownership to another. Usually used in unregistered land.

**Corporeal hereditament**

Physical property e.g. land, buildings – as apposed to incorporeal hereditaments such as easements.

**Counterpart lease**

A lease is normally drawn up in two identical copies. The lease (signed by the landlord) and the counterpart signed by the tenant. Each party then keeps the part signed by the other.

**Covenant**

An obligation entered into by a landowner. In certain circumstances this can be binding on subsequent owners of the land.

**Curtilage**

Old fashioned term used to refer to the land occupied along with a property e.g. the garden of a house.

**Dedication**

Giving rights over land for public use e.g. the dedication of land for use as a highway.

**Deed**

A document executed in accordance with various formal requirements. It must be signed and witnessed and then delivered.

**Defective Title Insurance**

Insurance taken out to protect a buyer and/ or lender against the consequences of a specified defect in title up to the financial limit specified in the policy.

**Delivery**

One of the formal requirements for a deed. A deed will be delivered when the signatory intends it to be binding on him. This will usually on payment by a buyer of the purchase price.

**Demise**

A lease; the grant of a lease. Sometimes used to indicate the property granted by a lease.

**Devise**

A gift of property by a will.

**Disbursements**

Payments made by a solicitor on behalf of the client e.g. search fees.

**Distress**

Seizing possessions of a tenant to secure payment of rent.

**Dominant tenement**

The piece of land which benefits from an easement.

**Due diligence**

The proper steps to be taken by a professional in connection with a particular transaction to ensure that it is lawful.

**Easement**

A right over one piece of land for the benefit of another e.g. a right of way.

**Enfranchisement**

In leases, the process of tenants acquiring the freehold in their land.

**Engrossment**

The final version of a document which will be signed by the parties. Traditionally prepared on better quality paper than mere "drafts" of the document.

**Epitome of Title**

A chronological list of the documents which prove title to unregistered land. It will usually be accompanied by photocopies of the documents.

**Escrow**

A deed which has been signed but only delivered conditionally. It will not become operative until the condition (e.g. the payment of the money) is fulfilled.

**Estate rentcharge**

A rentcharge imposed on freehold land to ensure the running of the burden of positive covenants.

**Execution**

Signing and delivering a deed to make it legally effective.

**Fair wear and tear**

Damage caused by the ordinary operation of natural causes. Sometimes in a lease a repairing obligation does not include damage caused in this way.

**Fine**

A non-returnable lump sum payable by a tenant to a landlord on the grant of a lease in addition to rent. A payment.

**Fixtures**

Items fixed to land which become part of it and will pass to a buyer on a sale, unless specifically excluded by the terms of the contract.

**Forfeiture**

A landlord's right to terminate a lease prematurely and sue on the tenant's breach of his obligations.

**Flying freehold**

A part of a freehold property which lies over land belonging to someone else.

**Good leasehold title**

One of the classes of title conferred by Land Registry. It guarantees the ownership of the lease but not that the landlord had the right to grant that lease.

**Ground rent**

The rent payable to a landlord, particularly in relation to leasehold houses and flats where the tenant will have paid a premium on the grant of the lease to cover the cost of the house and will effectively just be renting the 'ground' on which the building stands.

**Habendum**

The part of a deed which describes the property being transferred.

**Head Lease**

A lease granted directly by the freeholder. Used where the tenant under that lease has then granted a sub-lease of all or part of that property.

**Heads of Terms**

The fundamental terms of an agreement which will then form the basis of the formal contract between the parties when it is drawn up by the lawyers.

**Hereditament**

Real property; land.

**Holding**

The area of land demised to a tenant.

**Holding Over**

The act of a tenant remaining in possession of the land at the end of a lease.

**Improvements**

Changes to property which increase its value.

**Incorporeal hereditament**

An intangible right over land e.g. an easement.

**Incumbrance**

An adverse right affecting a property e.g. a mortgage or a covenant.

**Indemnity**

An agreement to reimburse or compensate someone in relation to some possible future liability.

**Indemnity covenant**

A promise to indemnify someone against a possible future loss or expense. Often included in a transfer to protect a seller against a possible breach and obligation by the buyer for which the seller could be liable.

**Indenture**

A deed made between two parties. Historically, each party was given his own copy both of had been written on the same document which was then cut into two using a wavy line.

**Inhibition**

Under LRA 1925 a method of protecting third party rights over the land. Any disposition was prevented in the circumstances prescribed e.g. on bankruptcy.

**Joint and several**

An obligation entered into by two or more persons under which they are 'severally' or individually liable (e.g. for the full amount of debt) as well as jointly liable with the others.

**Laches**

Delay in enforcing a right.

**Lady Day**

March 25<sup>th</sup>. The feast of the Annunciation of the Virgin Mary. One of the usual quarter days.

**Lessee**

Tenant under a lease.

**Lessor**

Landlord under a lease.

**Lien**

The right to hold onto another's property as security for a debt.

**Managing agent**

Someone appointed to oversee the day-to-day maintenance of a property e.g. a block of flats or a shopping centre.

**Mesne**

Intermediate

**Mesne profits**

Compensation due to a landowner for the unlawful occupation of his land e.g. by a tenant who holds over without the landlord's consent.

**Message**

Old fashioned term for a dwelling house.

**Michaelmas**

September 29<sup>th</sup>. The feast of St Michael. One of the usual quarter days.

**Midsummer Day**

June 24<sup>th</sup>. The feast of St John the Baptist. One of the usual quarter days.

**Minor Interest**

Under the Land Registration Act 1925, an interest which had to be protected by an entry on the register in order to bind a purchaser.

**Office copies**

The name formerly used for official copies – but still often used in practice.

**Official copies**

Copies of the register entries relating to a title.

**Overage**

The potential right, on a sale of land, to receive extra payments over and above the sale price, should the land sold increase in value in the future, for example on the grant of planning permission.

**Party wall (or fence)**

A wall (or fence) owned jointly by adjoining landowners over which both have rights and responsibilities as to maintenance.

**Peppercorn rent**

A nominal rent.

**Perpetuity**

For ever.

**Planning permission**

Permission required from the local authority to develop land.

**Possessory Title**

One of the classes of title the Land Registry may grant. Often approved when the owner claims to have lost the title deeds, or to have acquired ownership by adverse possession.

**Pre-emption**

A right of first refusal.

**Premium**

A non-returnable lump sum payable by a tenant on the grant of a lease in addition to rent.

**Prescription**

A method of acquiring legal easements by a long user – often 20 years user as a right will suffice.

**Public bridleway**

A path or road over which the public have the right to pass on foot or with horses and bicycles, but NOT with vehicles.

**Public footpath**

A path over which the public have rights to pass on foot only.

**Public highway**

A road over which the public have rights to pass on foot and with vehicles.

**Put option**

A contract under which a party has the right to sell his land to another.

**Quarter Days**

25<sup>th</sup> March; 24<sup>th</sup> June; 29<sup>th</sup> September; 25<sup>th</sup> December. The only days on which (traditionally) rent was payable. Still much used in commercial leases as rent payment days.

**Reddendum**

The part of a lease which specifies the rent payable.

**Rentcharge**

A sum of money payable by the owner of freehold land.

**Riparian rights**

The rights of a landowner over a non-tidal river adjoining his land, e.g. rights to fish.

**Sale and leaseback**

An arrangement in which a landowner sells the freehold and then take back a lease of the property from the new freeholder. Often used to free up capital tied up in freehold land.

**Seisin**

Old fashioned term denoting the possession of freehold land.

**Service charge**

Payment made by an owner of property towards the landlord's costs of the upkeep of the 'common parts' e.g. the repair and maintenance of a block of flats or shopping centre.

**Side letter**

A letter accompanying a legal document e.g. a contract, explaining or clarifying the intentions of the parties.

**Stamp Duty Land Tax**

Tax payable to the Government (inter alia) on the purchase of property or the grant of a lease. Known as stamp duty until 1/12/2003.

**Sub-lease**

A lease granted by a person who is himself a tenant. Must be of a shorter duration than the head lease.

**Surrender**

The premature termination of a lease by agreement between landlord and tenant.

**Telegraphic transfer/TT**

Term still used to signify the transfer of money from one bank account to another e.g. from the buyer's solicitor's bank to the seller's solicitor's bank on completion. The bank's computerised system is used today, but the old term is still used. Often shortened to 'TT'.

**Tenant's Fixtures**

Chattels fixed to leasehold property by a tenant which, although strictly fixtures can be lawfully removed by the tenant.

**Title**

The ownership of a piece of property. Often also used to signify the documents used to prove ownership.

**Transfer**

The document used to pass the ownership of land to another. Usually used in relation to registered land.

**Travelling draft**

The draft of a document that 'travels' between the parties and on which the various amendments required are made. Will nowadays often be sent electronically.

**Tree Preservation Order**

An order made by the local planning authority preventing the felling, or lopping of trees without permission from the local authority.

**Trigger notice**

A notice required to initiate some procedure – usually used in relation to a notice required to initiate a rent review under a lease.

**Turnover lease**

A lease (e.g. of retail premises) where the rent is fixed as a percentage of the annual turnover.

**User**

The use to which a property can be lawfully put.

**Usual quarter days**

March 25<sup>th</sup>; June 24<sup>th</sup>; September 29<sup>th</sup>; December 25<sup>th</sup>. Days on which rent was traditionally payable. Still frequently used in commercial leases as rent payment days.

**Vacant possession**

Having no tenant or other person in occupation.

**Waiver**

The abandonment of a right e.g. forfeiture.

**Warranty**

A promise as to the truth of a statement.

**Yield up**

To give up possession at the end of a lease.

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