

LEASE RENEWALS – TRAPS AND PITFALLS

If you are a dentist looking to purchase either a practice with an existing lease, or set up a squat with a new lease, you need to be aware of your statutory rights when it comes to renewing the lease at the end of the contractual term. Unless you are fortunate enough to be offered the freehold you will typically need either a new lease of between 10 and 20 years in length, or an existing lease having that number of years unexpired.

Can you renew?

Firstly, it is important to realise that you will not be able to automatically renew your lease unless it is a protected lease. The Landlord & Tenant Act 1954 offers protection to a tenant of business premises in that he has the right to renew the lease, subject to fulfilment of certain conditions. This is typically referred to as a “renewable lease”. However, not all leases are renewable leases. It is therefore important for you, as purchaser, to obtain proper legal advice to ascertain whether your lease is renewable or whether it will come to an end on the expiry date stated in the lease, in which case you could be faced with the spectre of eviction at the end of your contractual term and the resulting loss of your business. A solicitor will be able to advise you whether this situation is likely to arise by a quick and simple check of the lease.

In the unfortunate event that you are faced with taking on a lease which does not have a right to renew, all is not necessarily lost. In the case of a new lease, the draconian effect of “an excluded lease”, as it is referred to in the profession, can be compensated for, for example, by possible negotiation of either an option to purchase the landlord’s freehold interest or at least a right of first refusal on any proposed sale of the freehold by the landlord.

Mechanism for renewal

Assuming your lease is renewable, you will need clear advice as to what you must do in order to safeguard your right to renew. Either landlord or tenant can commence the renewal procedure at the end of the lease term by serving a notice on the other, the effect of which is to terminate the existing lease and initiate renewal negotiations. There are complex and detailed rules governing the form, content, timing and period of notice which must be given and legal advice on all of these aspects is absolutely essential.

You need to be aware that, even where the lease is renewable, the landlord can still prevent a renewal and regain possession if he can show that one of a limited number of statutory exceptions applies. An example is the landlord requiring the premises back for his own use. If the landlord objects to a renewal on any of these grounds, your solicitor will be able to advise on the course of action you should take.

If no statutory notice is served by either party, your lease will continue by law automatically and indefinitely after the expiry date unless and until terminated by service of a notice. There are tactical reasons dictating whether one or other party should serve a notice in certain circumstances and again good legal advice is of the utmost importance.

Negotiate and agree

Where the landlord has no objection to renewing the lease it will be up to both parties to negotiate and agree terms for the new lease within a reasonable time. The tenant has the right to a new lease on similar terms to the existing one, subject to a possible change in the amount of the new rent to be charged. At this point it would be advisable to engage the services of a reputable surveyor in order to establish what the new level of rent should be and whether any of the other lease terms reasonably ought to be changed or at least modernised.

In the majority of cases it is usual for the landlord and the tenant to agree renewal terms between them. However, should agreement not prove possible, then it is open to either party to apply to the court for a decision on what the terms should be. Time limits apply with regard to when a court application can be made. These and all other statutory provisions applying to the renewal procedure generally are very strict and, unless adhered to in every respect, can result in the right to renew being lost. Caution is therefore the watchword during this whole process.

If you do have to apply to court, you should be warned that court proceedings can take a long time and it might be many months before a final hearing is held to determine the issues. Therefore, it is recommended that you should try to agree the new lease terms with your landlord wherever possible.

Interim rent

Whilst the renewal procedure is going on, either landlord or tenant can apply to court for a determination as to what the rent should be for the interim period between the end of the contractual lease and commencement of the new one. Such an application is not warranted in every case, however, and again, you need advice as to whether you should make one.

Compensation

In some of the cases where the landlord is entitled to prevent a renewal, the tenant is entitled to receive compensation for having to vacate the premises. Compensation is calculated by reference to rateable values and the amount of compensation will also depend upon how long in total the premises have been used as a dental practice (including any time your predecessor(s) in title carried on the practice).

Costs

You will inevitably incur legal and surveyors' fees and, understandably, you will want to know what these are likely to amount to. Costs will very much depend upon how the renewal negotiations develop, i.e. how long it takes for the parties to reach agreement on the renewal terms or, alternatively, if agreement cannot be reached, to what extent issues are contested in court proceedings. Solicitors have a professional duty to provide clients with an estimate of costs, both at the outset, and also with updates as a case progresses. Thus, you should have a reasonable idea of the likely total costs at any given time in the process.

As I hope can be seen, the lease renewal procedure is full of pitfalls. The key is to obtain the right professional advice at the right time in order to avoid falling in to one of them.

Please contact me if you would like to discuss any of the points in this article in more detail.

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