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Your Lease Liability – The long and the short of it

In the second of an occasional series aimed at GPs who rent their surgery premises, solicitor Daphne Robertson looks at matters relating to lease liability

When faced with the prospect of a new lease, be it a fresh start or a renewal of a recently expired lease, then, for landlords and tenants alike, the question arises as to how long the lease should be.

Both Landlords and Tenants often favour a long lease but the optimum lease term for a tenant is probably no more than 10 years. From a landlord's point of view, a long lease term means that he does not have to worry about finding new tenants every so often. He also avoids rent free periods. Since the rent from GP tenants is effectively Government-backed, a Landlord ought to be happy with the strength of his Lease covenants. On the other hand a Landlord may have plans for the premises in the future, and may not want to tie things down.

From the tenant's point of view, a long lease may appear desirable for reasons of security and to have something that has a transferable value.

Security

Taking the question of security, commercial leases normally have the protection of the Landlord & Tenant Act 1954. Under this the tenant has the right to a new lease at the expiration of the contractual term. This protection is subject to the right of the landlord to take back the premises at the end of the term in certain circumstances; the most important being his definite plans for redevelopment. Even if the landlord can establish a right to take back the premises, the tenant has the right to compensation. However, these rights do not apply if the lease is contracted out of the 1954 Act and so, as a Tenant, such a provision should be avoided.

Liability

When the lease is sold on by the Tenant, the Tenant is still liable to the landlord if his purchaser breaches any term of the lease. In leases granted on or after 1st January 1996 ('new leases') this liability is limited until the next purchaser sells the lease on again. In practice, the outgoing partner is off the hook on the first *subsequent* assignment by the partners after he has left the practice. But leases granted before 1st January 1996 ('old leases') are different. Under these every original tenant remains liable to the landlord for any breach of a lease term by any subsequent tenant for the remainder of the whole of the lease term.

Cost

Since 1st December 2003, Stamp Duty Land Tax (*SDLT*) is charged at 1% of *all* the rent added up over the lease term, subject to the first £150,000 that is nil rated meaning that it attracts zero percent SDLT. Shorter leases therefore incur lower or indeed zero SDLT. However, the counter argument to saving SDLT with shorter leases is that the tenant will incur extra legal costs in the future with more regular lease renewals.

Asset or liability?

A lease may be viewed as an asset if the Bank has insisted on a charge over it. The tenant's liability also remains for so long as the lease lasts, not only for rent but also for the condition of the premises. At the end of the term, if not sooner, the tenant can be served a Notice of Dilapidations. The tenant is liable for the condition of the premises for current and past defects.

The Law

Every 10 years or so the law successfully intervenes or tries to intervene in favour of the tenant to improve areas of lease clauses that are otherwise disadvantageous. A comparison of leases drawn up in the 1970's or the 1980's with modern leases reveals that older leases are often more disadvantageous for the tenant. We have seen that in a lease drawn up before 1st January 1996 the first tenant and any subsequent assignee remain liable jointly or severally for the lifetime of the lease.

Socio-political considerations

In the next 10 years legal developments suggest that Parliament will introduce further legislation favouring the tenant. Since the 90's there has been established a voluntary Code of Practice for lease terms. The Government has warned that if the Code is not adopted voluntarily by landlords, then there will be legislation. Recently, Parliament went close to forbidding upward-only rent reviews but it did not do so.

Conclusion

New leases should not exceed a term of 10 or 15 years so long as the landlord has no plans for the premises largely because a shorter lease gives the tenant an opportunity to modernise his lease in line with current law.

Daphne Robertson leads a bespoke team of ex-City lawyers at DR Solicitors, specialising in providing medical business law advice to NHS GP Practices.

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LEASES – Points to Consider

- ➡ New leases should not exceed 10 or 15 years, assuming the landlord has no plans for the premises
- ➡ Always check whether the lease is contracted out of the 1954 Act
- ➡ For 'new leases' after 1 January 1996 there is no liability after an assignment
- ➡ SDLT on long leases is 1% of all rents over lease term but £150,000 nil rated