

## Break clauses in leases – exercising a break option

### Break clauses

Whether you are a landlord or a tenant it is important to understand the practical issues surrounding the exercise of a break clause in a business lease.

### What is a break clause?

A lease may allow either a landlord or a tenant to end the lease early by giving a written notice to the other. How and when this can be done will be set out in the lease. It is vital to check the terms of the lease carefully and to comply strictly with any conditions if the break notice is to be valid.

### When can a break be made?

Often the right to break will only apply on specified dates and will be subject to specified pre-conditions. Commonly the tenant must have paid all monies due and have left the premises vacant and clear of all its belongings on the relevant date.

The break will also be subject to any other general laws which may apply giving rights after such a notice has been served.

### Practical issues to consider when exercising a break option

- Once a break notice has been served it cannot be withdrawn unilaterally. Even if a mutual waiver of the notice is agreed a new lease will be inferred from the date of expiration of the break notice. This will give potentially give rise to a Stamp Duty Land Tax liability on the tenant.
- All the relevant requirements in the break clause must be complied with. If

the lease requires that certain things are done before a notice is served or comes to an end, consider appointing a surveyor to carry out a compliance audit before serving the break notice. If you are a tenant, ask your landlord to agree a schedule of any repair works to be done before the notice expires.

- Evidence of the correct service of the break notice will be crucial. Consider appointing a solicitor to ensure that this is done correctly.
- If rents are paid quarterly in advance this will usually mean paying the full quarter's rents even though the break date may fall part way through the quarter. Any payment for the period after the break date may be repaid by a landlord after a break clause has been effectively exercised if there are express provisions for apportionment upon the operation of a break clause in the lease.
- Ensure any other outstanding sums due are paid and if you are a tenant request a financial statement from the landlord when serving the notice. If any amounts are in dispute payment can be made on a "without prejudice" basis and the matter disputed later. For example check whether default interest is due on past arrears as this is due even if it has never been demanded. Non-payment of such sums, even though unknown by the tenant as being owing, have been held to be fatal to a break notice being effective.
- If the lease specifies vacant possession on the break date ensure that all belongings have been removed and that the tenant has not retained any keys.

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### Further information

This information sheet is not intended to be a substitute for specific advice and is for general guidance only. It is based upon our understanding of the legal position as at March 2019 and may be affected by subsequent changes in the law.

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