

Change In The Law Relating To Leases of Commercial Premises

LANDLORD AND TENANT (COVENANTS) ACT 1995

At Stone Rowe Brewer LLP we recognise the importance of providing a complete, professional service to our clients. We offer specialist advice on all aspects of commercial property law including Landlord and Tenant Act work. We will be pleased to assist you with your purchase or sale of commercial premises and have highlighted here the rules concerning leases as set out in the Landlord and Tenant (Covenants) Act 1995 which came into operation on 1 January 1996.

LANDLORD & TENANT (COVENANTS) ACT 1995

In the past a Tenant who is the original Tenant under a commercial lease has always been responsible for the rent and other covenants in the lease throughout the length of the lease, even after he has transferred it to someone else. This was called 'Privity of Contract'. In April 1995 the Government announced (to the relief of many Tenants) that in future this would be abolished.

LEASES AFTER 1 JANUARY 1996

From 1 January 1996 Privity of Contract for all new leases was abolished and in its place the following apply:

- On a sale or transfer of a lease, the Tenant will be required to give a guarantee to the Landlord in respect of the person he is transferring the lease to;
- A Landlord is allowed to apply for release from his covenants in the lease if he transfers the freehold or reversion;
- The Tenant must comply with the conditions in the lease if he wants to transfer or sell the lease (e.g. there is usually a condition that the new Tenant must be financially sound and/or offer guarantees);
- Where a Tenant has sold or transferred a lease and then the new Tenant is in arrears with the rent or in breach of other conditions in the lease, the former Tenant will be liable provided the Landlord notifies former Tenants and their Guarantors within six months of the current Tenant's breach of covenant or, if he fails to do so, the Landlord foregoes his right to claim from the previous Tenant;



- Where a lease has been varied after it has been sold or transferred, the former Tenant may not be liable for a breach which arises from the variation;
- A former Tenant or his Guarantor who is required to pay a Landlord (where for example the person he transferred to is in default) is entitled to demand a lease from the Landlord.

LEASE GRANTED BEFORE 1 JANUARY 1996

Privity of Contracts still exists for leases granted before 1 January 1996. However the following provisions of the Act apply:

- A Landlord must notify former Tenants and their Guarantors within six months of the current Tenant's breach of covenants. Previously former Tenants have been faced with arrears extending over a year or more without knowing before they received a demand from the Landlord that the current Tenant was in arrears;
- Former Tenants have no liability for certain lease variations taking place after they have transferred the lease. Previously leases could be extended and a former Tenant could be responsible for rent arrears for a period after the original length of the lease;



- A former Tenant or his Guarantor who is required to pay a Landlord (where for example the person he transferred to is in default) is entitled to demand a lease from the Landlord if he wishes. Previously a Tenant had to pay the arrears but had no right to go back into possession of the premises to recover his losses.

So, if you are

- a Tenant under a pre-1 January 1996 lease, or
- considering taking an assignment of a pre-1 January 1996 lease, or
- considering taking on a new lease

we will gladly consider the implications with you and particularly how you can minimise your risk. Our Commercial Department will be pleased to assist and give you advice on any aspect of commercial law – we are just a phone call away.

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