

The options of getting out of a commercial lease

Struggling Midlands businesses should scrutinise the terms of their commercial lease to see if large-scale savings could be made, or whether they could get out of it altogether. Abigail Clark, a solicitor in the Commercial Property team at Else Commercial Solicitors, says the cost of occupying a commercial building is likely to be one of the main overheads for a business – and with the recession deepening a ‘get out’ option may need to be considered.

“I would advise tenants to consider their options early. They may reach a favourable solution before cash flow problems put their business at risk.”

A lease is a complex legal document which might tie down a tenant for years, but there are often options available to dispose of it, or renegotiate terms.

“Tenants will need to consider the terms and whether they are able to assign the lease with the landlord's consent, underlet by finding a sub tenant, or exercise a break clause,” she said.

“Another possibility would be to negotiate surrender, but the tenant may find he has to pay a premium before the landlord agrees.”

She warned: “In the current economic climate landlords are battenning down the hatches against unexpected vacancies – the landlord’s lawyer will frustrate the exercise of rights as far as possible.”

She said the conditions governing breaks are often difficult and complex and the courts usually required strict compliance with pre-conditions.

In one case the tenant lost his right to break the lease because he had painted the premises 13 months from the break date instead of within 12 months.

“It is important to take legal advice on break options, which are a hotly contested area. There are three types which all need legal interpretation – the unconditional break option, the conditional break option and the ‘material respects’ break option.

“In the current market a landlord’s lawyer will scrutinise every break notice and look at ways of challenging it.”

She said that sometimes commercial leases allowed the tenant to break at a specified time during the term, or when certain specified events occurred.

“I think that could be used as an exit route for struggling business – provided they are exercised in accordance with their terms.

“In this climate a landlord might be flexible if he senses his tenant’s business is in jeopardy.”

“The threat of being faced with an empty building may leave a landlord with little choice but to renegotiate on more favourable terms.”

A landlord may also be more willing to accept a surrender of the lease rather than being faced with the tenant going into liquidation and the liquidator disclaiming the lease.

For more information, please contact: [Abigail Clark](#)

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