

Everything you need to know about: Commercial Conveyancing



Introduction

The process of Commercial Conveyancing involves several stages that can result in many questions. As an award winning member of the Law Society Conveyancing Quality Scheme, we are able to offer our expert guidance and advice for Landlords and Tenants on the entire process, including the available financial support.

Landlords

What information do I need to provide to lease a commercial property?

This depends on whether an estate agent is involved. If an agent is involved, they will gather the information together to enable the Heads of Terms to be created.

If there is no agent involved, you will need the following details;

- ✓ Your full name(s) or company name
- ✓ Property address
- ✓ Tenant name(s) or company name
- ✓ Tenant address
- ✓ Rent
- ✓ Premium (if applicable)
- ✓ Term
- ✓ Other Conditions
- ✓ Responsibility of legal costs

Who will draft & negotiate my Lease?

Again, this depends on whether an estate agent is involved. If an agent is involved, they will negotiate the basic terms to allow the Heads of Terms to be drawn up.

Your Solicitor will then draft a Lease based on the Heads of Terms and prescribed Lease clauses. The Solicitor acting for the tenant may then suggest and/or request amendments.

If an agent is not involved, then you as the Landlord will need to negotiate the basic terms to allow the Heads of Terms to be drawn up.

What if I want to sell my property?

Selling will again depend on a number of factors but assuming the property is leasehold and tenanted, it is similar to selling a residential property without vacant possession i.e. with a tenant in situ.

Standard Commercial Property Standard Enquiry (CPSE) forms will need to be completed by the owner. These will be provided to the buyer's Solicitor along with a contract and evidence of both the freehold and leasehold title. Freehold is the overriding title and the leasehold title will evidence the tenant and include a copy of the Lease.

The buyer and their Solicitors will raise formal enquiries (legal questions) based on the contract documentation and will want further details about the tenant; including whether the rent payments are up to date and may also ask for bank and/or trade references.

Who advises on my maintenance and utilities?

The ultimately depends on who is responsible. Usually the tenant is responsible under the terms of the Lease.

Tenants

What information do I need if I'm leasing a commercial property?

This depends on whether an estate agent is involved. If an agent is involved, they will gather the information together to enable the Heads of Terms to be created.

If there is no agent involved, you will need the following details;

- ✓ Your full name(s) or company name
- ✓ Property address
- ✓ Landlord name(s) or company name
- ✓ Landlord address
- ✓ Rent
- ✓ Premium (if applicable)
- ✓ Term
- ✓ Bank reference
- ✓ Other Conditions
- ✓ Responsibility of legal costs

What if my property already has a Lease?

You have two options;

1. You could surrender the current Lease to allow a new Lease to be drawn up with different terms.
2. Assuming there is no prohibition clause, you could assign the current Lease to the new Tenant.

The difference is that assigning the current Lease will allow no amendments, whereas a new Lease will allow amendments and negotiation.

Who will draft & negotiate my Lease?

Again, this depends on whether an estate agent is involved. If an agent is involved, they will negotiate the basic terms to allow the Heads of Terms to be drawn up.

The Landlord's Solicitor will then draft a Lease based on the Heads of Terms and prescribed Lease clauses. Your Solicitor will then suggest and/or request amendments based on his advice, as well as your feedback, once he has reported to you.

If an agent is not involved, then the Landlord will negotiate the basic terms with you to allow the Heads of Terms to be drawn up.

Who will deal with my Lease renewal?

Initially, you will need to contact your Landlord but you may find that your Landlord contacts you towards the end of the Lease term. If you intend to renew, the Landlord may directly deal with you or as is usual, they may instruct an agent because a valuation will be required.

What if I want to leave the property that I'm leasing?

You have two options;

1. Assuming there is a break clause, you could activate the right to break the Lease.
Not all Leases have break clauses but if they do, they are either timescale specific, e.g. after two years, and/or have a specific notice period e.g. one month.
Tenants also need to consider the cost and time required for dilapidations, which is the term for returning the rented space in good repair and in reference to any specific clauses. Please see our James Maguire & Co case study for a further example of this.
2. Assuming there is no prohibition clause, you could look assign the current Lease.

The new tenant will have to go through a similar process as when you took the Lease out, which includes providing references.

Who will discuss and rent reviews or property management?

Rent reviews will depend on whether they are applicable under the terms of the Lease. If rent reviews are applicable, the Landlord is likely to instruct an agent or RICS valuer to assess the current market value. Once this has been provided, either the Landlord or their agent will contact you with an offer.

You will then need to negotiate and/or accept the offer before instructing a Solicitor to begin work.

Property Management is usually the responsibility of the Landlord and therefore you should contact them directly.

Financial Support

Who will act on behalf of my bank?

If you are relying on finance to purchase or fund a commercial property acquisition, then the bank will need a Solicitor to act on its behalf. Some banks insist on separate representation, which means that we will need to provide the Bank's Solicitors with documentation they request, to satisfy the banks' lending criteria and security.

However, most high street lenders do allow dual representation, meaning we can act for you and the bank at the same time; saving both time and cost. Our list of duties is likely to include;

1. Checking the terms of the mortgage or finance offer.
2. Complying with any special conditions or requirements.
3. Arranging the signing of their formal documents.
4. Reporting anything that may affect their valuation or lending.
5. Checking searches and/or arranging search indemnity policies.
6. Submitting the Certificate of Title (COT) & drawing down the purchase funds for completion.

How can I ensure all documentation is secure?

The bank will issue us with formal instructions which we will adhere to. As with all tasks we undertake on clients behalf, we adhere to the Solicitors Code of Conduct which includes confidentiality. As a member of the Law Society Conveyancing Quality Scheme (CQS), we have also been recognised as achieving 'Excellence in Conveyancing Practice'. We also complete compulsory training, self-reporting, random audits and annual reviews with the Law Society in order to maintain CQS status.

What happens if I'm part of a joint venture?

If you are part of a Joint Venture (JV), you need to satisfy yourself with the parties you are entering into the JV with.

You will need to provide ID and details of the JV structure to your Solicitor to satisfy them also. If you are using bank finance, then it is likely that you will need to provide the same details to them. Your Solicitor may also suggest a formal JV document to detail the structure of the JV & to account for deposit & equity contributions.