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LANDLORD'S CONSENT FOR TENANT TO ASSIGN LEASE

Once a tenant has found somebody to take a lease off their hands they are particularly keen to move quickly. If the lease says that the tenant may assign with landlord's consent then the landlord may not unreasonably withhold that consent nor may he delay. The courts have held surprisingly short periods as unreasonable delay. Landlords should always therefore act promptly.

If a landlord unreasonably withholds consent, or delays it, the tenant can

go to court to get a declaration but given the time and cost that may not be a satisfactory commercial solution to the tenant's problem. Equally an assignee, in particular, is not likely to be terribly comfortable taking an assignment of the lease without the landlord's consent unless the landlord is quite clearly acting unreasonably. However, this should not give the landlord a false sense of security. If the transaction falls through in consequence and the landlord is shown to have been unreasonable then he will be liable to his tenant in damages.



AUCTION

At the moment the number of properties being sold at auction as a proportion of the overall market is increasing. It is worth stressing that when you acquire a property at auction, from the moment your bid is accepted and the hammer comes down you are contracted to purchase in exactly the same way you would be when you exchange contracts in an ordinary transaction. It is therefore strongly recommended you investigate the property in the same way as you would if you were negotiating a purchase by private treaty. However, the work needs to be carried out well in advance of the auction. Solicitors and surveyors should be instructed at least 4 weeks before to enable good preparation.

SEIZING TENANT'S GOODS

If a tenant owes his landlord money the landlord may have the right to seize the tenant's goods to recover the amount owed. This is known as distraint. Care needs to be taken in exercising this right because if it is exercised unlawfully there are penalties. Legislation was passed in July 2007 which aimed to

replace this system with a new system known as Commercial Rent Arrears Recovery (CRAR).

However, this new system has not come into effect and an indication from the Ministry of Justice suggests that it will not be implemented until April 2012.

VOID PROPERTY RATING RELIEF

Currently unoccupied properties enjoy an abatement of the rates for only a limited period of time. For the financial year 2009/2010 only, all empty properties with a rateable value of less than £15,000.00 will

continue to be relieved against rates for so long as they remain unoccupied regardless of the length of the void.



• Newbury

• Hungerford

• Swindon

• Wantage

FORFEITURE

Ending a lease by forfeiture has often been regarded as the nuclear option in the landlord's enforcement arsenal. However, in current market conditions this may not always be an appropriate response particularly if the premises are likely to be empty for a period and rates kick back in. However, there are circumstances where it is a desirable route to take and it can easily be lost if tender of rent by the tenant is accepted by the landlord.

In a recent case a landlord issued bankruptcy proceedings against his tenant for arrears of rent. While the proceedings were pending the landlord became aware that there

were other breaches of covenant which caused him concern and in consequence he wished to forfeit the lease. The tenant sent a cheque to cover not only the sum required to discharge the bankruptcy but also further arrears of rent. The landlord retained that part relating to the bankruptcy sum and returned the balance to the tenant. The court held that the acceptance of the monies the subject of the bankruptcy proceedings had not waived the landlord's right to forfeit the lease in relation to other breaches that the landlord became aware of subsequently. This is a complex area of law and the cases are not always consistent.

COMMERCIAL PROPERTY TEAM



Malcolm Poynter

Head of Commercial Property
malcolm.poynter@clmlaw.co.uk

TAKE ADVICE FROM OUR TEAM:

David Thomas 01235 771234

david.thomas@clmlaw.co.uk

Hemant Amin 01635 521212

hemant.amin@clmlaw.co.uk

Hugh Ellins 01793 511055

hugh.ellins@clmlaw.co.uk

Julie Lloyd 01793 511055

julie.lloyd@clmlaw.co.uk

Mark Sarnowski 01488

682506

mark.sarnowski@clmlaw.co.uk

Paul Wilkinson 01635 521212

paul.wilkinson@clmlaw.co.uk

VOLUNTARY REGISTRATION

The Land Registry are keen to push ahead with full registration of all land within England and Wales and are keen to promote voluntary registrations. To that end they do promote reduced Land Registry fees for voluntary registrations although in complex cases the other costs involved may reduce the significance of that saving.

There is a particular advantage in registering land where there are extensive boundaries which may not

be regularly inspected as it helps protect against adverse possession. Since October 2003 in respect of registered land the rules allowing 'squatters rights' are much tighter than they were previously.

The Land Registry registration procedure may also be used to remove minor anomalies from titles and it may be best to address problems whilst those with long term memories of the land are still around.

CARBON REDUCTION

It is likely from April 2010 that



organisations whose electricity consumption is greater than 6000 megawatt hours a year will be required to take part in the carbon reduction commitment. This is a Cap and Trade scheme and it will not apply where organisations are already covered by some other scheme such as the EU Emissions Trading scheme. For further details see www.defra.gov.uk/carbonreduction.

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