A GUIDE TO COMMERCIAL PROPERTY

This booklet will act as your guide to commercial property and the processes involved.

Taylor Bracewell
Your solicitors | Your success

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Introduction

Our commercial property solicitors have a wealth of experience in a wide variety of different areas of commercial property law. Ensuring all aspects of commercial property law are covered, our team will guide you every step of the way.

Whether you are purchasing or selling a commercial property, we understand that it can be a complex and stressful process. That's why our solicitors take a proactive, practical and commercial approach, ensuring that your transaction is completed as smoothly as possible. Our team can also assist with commercial leases, property disputes, planning matters and more.

At our firm, we pride ourselves on building strong relationships with our clients and providing a personalised service. We take the time to understand your business and objectives, tailoring our advice to meet your specific needs. Our goal is to help you achieve your goals and maximise the value of your commercial property.

Business Leases

Leasing a commercial property is essential for many businesses. Small and start up businesses may not be able to raise finances to purchase premises. Furthermore, it gives the opportunity to trade in prime locations, which may only be available to rent.

Particular issues to be considered include:

LENGTH OF TERM

This may have implications on the stamp duty payable and registration of the lease at the Land Registry.

RENT

When is it payable and has consideration been given to a rent- free period?

BREAK OPTIONS

Who can exercise these and what if any conditions are to be imposed?

RENT REVIEW

What mechanism is advisable, a market rent review or a retail prices index review, what is the frequency of review?

REPAIR

Lenders or investment landlords often require what is known as a FRI lease or a full repairing and insuring lease. Tenants are best advised to resist this on older buildings, where a more limited repairing obligation is advisable by reference to internal repair only or by limiting the standard of repair by a schedule of condition.

SERVICE CHARGE

What is the mechanism for determining the share payable? Is there a cap? This is often a source of dispute, so it is important to get this right.

SECURITY OF TENURE

Is the lease to be granted with the benefit of security of tenure – that is a right to renew the lease at the end of the term or is this to be excluded?

GUARANTEE PROVISIONS

Is a guarantor required? If so are the guarantee provisions to be limited at all?

Business Sales and Purchases

Our commercial property team have extensive experience in dealing with large and small transactions. Our past clients have included sole traders, partnerships, limited companies and PLC's.

We can deal with business sales and purchases for all sectors. Our commercial property team are here to help.

Some issues to be considered include:

- What price is payable for each element of the business?
- We will liaise with your accountants and valuers to ensure the correct price is being attributed to each element of the business sale.
- Are there employees being transferred?
- What liabilities may there be for employees? Our employment team can help smooth over any employment issues that may arise.
- What warranties are to be given and what are the terms of these?

Due diligence is particularly important in a business sale or purchase – we know the right questions to ask.

Are intellectual property rights important?

We can resolve any trademark, patent or copyright issues that arise from buying and selling a business.

We understand that every client's needs are unique and we work closely with each of our clients to develop a tailored approach that meets their specific requirements. Whether you are looking to buy or lease commercial property, we have the expertise and knowledge to help you make informed decisions and achieve your goals.

If you are considering a commercial property transaction, we invite you to get in touch with our team today. We would be happy to discuss your requirements in more detail and provide you with a free, no-obligation quote for our services.

Commercial Premises Sales and Purchases

Our commercial property team have the experience and specialist knowledge to deal with all aspects of the sale and purchase of a commercial property and will as part of the transaction deal with the following aspects:

TITLE INVESTIGATION

We will do the following:

- Identify the extent of the property you are buying
- Report on any restrictive convenants that might affect your use
- Check that the property benefits from all necessary easements, such as right of way.
- Identify any easements, which adjacent land may have over the property and which might affect your existing use or future plans for the property.
- Advise a way forward on any problems arising, such as title indemnity insurance, if appropriate, or deal with the grant or removal of easements / convenants as required.

SEARCHES

We will conduct searches on the property being purchased to reveal important information, such as planning and environmental issues, notices from the local authority, subsidence claims and contamination. The customer will be informed if site-specific searches are required.

DUE DILIGENCE

We will deal with standard pre-contract and specific enquiries in respect of the property and report to you throughout.

FINANCE

We manage mortgage finance and collaborate with all the commercial lenders, we are familiar with their paperwork and specific instructions and can anticipate and resolve any concerns.

REGISTRATION

Once the transaction has been completed we will deal with the registration of your title at the land registry.

SDLT

We will advise you at the outset if SDLT is payable and will complete and submit the SDLT form and remit the duty payable.

OTHER PROFESSIONALS

We will communicate with other professionals involved, including property agents, surveyors, lenders, accountants and financial advisors.

LEISURE, HOTELS AND RETAIL

The modern business environment includes leisure, hotels and retail sectors, each with their own unique business issues. The commercial property team can help businesses in all sectors secure property and develop their business.

Retail - Our commercial property team have advised retail businesses both locally and regionally on all aspects of their premises. We have acted on sales and purchase of retail space, as well as retail lettings in some of the region's biggest shopping centres.

Leisure - We have experience in dealing with all different types of leisure centres, including cinemas, gyms, restaurants both franchising and independent. We can help with any employment issues that they may face as well as disputes and property issues.

Hotels - We have represented a variety of stand alone and hotel chains with development land as well as franchising and helping with hotels deal with disputes, employment issues and expansion into other areas of the country.

LOCKOUT AGREEMENTS

A lockout agreement is essentially an agreement that a future sale between a buyer and seller will take place. A lockout agreement allows the buyer exclusive rights to the sale of that property within a certain time period. Our commercial property team can help you secure a lockout agreement.

PROTECTING THE BUYER

Having a lockout agreement in place helps the buyer of a property as it will prevent the seller from negotiating with any other potential buyers during the period of the lockout. This will also stop the seller from accepting a higher offer and leaving the original buyer high and dry.

WHAT SHOULD A LOCKOUT AGREEMENT INCLUDE?

- The lockout period should be clearly defined
- Each parties obligations will be set out
- Any further conditions

During the lockout agreement the buyer may proceed with the conveyancing process, which includes pre-contract searches, enquiries and inspections. It is advisable for the buyer to keep the seller aware of any relevant information during this process. If you would like to know if a lockout agreement would work for you, please get in touch with our commercial property team, who can help guide you through the process.

OPTIONS, CONDITIONAL AGREEMENTS AND OVERAGE

The commercial property team has the expertise and experience to deal with complex property transactions.

OPTIONS TO PURCHASE

These are sometimes known as a Put and Call Option or a Pre- emption Agreement. These are complex agreements which either give the buyer a right to buy (but not an obligation to do so) during a specified period or after a particular event occurs such as the grant of planning permission for development (a Put Option) or where the buyer is given a right of first refusal to purchase land when and if the seller decides to sell (a Call Option).

So in a Put Option, which is your standard option to purchase, the buyer is in control and can decide when and if they wish to buy during the option period, whilst in a call option the seller is in control.

Some of the issues arising are:

- Is a deposit payable and is this non-refundable?
- Is the option conditional on planning permission for development and if so is there to be an obligation to obtain this?
- Is the buyer putting in place options with a number of owners, who each own a part of a development site? This is a way of minimising risk to a buyer, so the options will only be exercised once a buyer has an option with each owner and can, therefore, secure the whole site?
- What is the price payable? Is this to be determined now or to be determined following planning permission being granted, if so is there a mechanism in the option for valiuation of the property?

CONDITIONAL AGREEMENTS

These are often used instead of options. This is an agreement to purchase a property but made conditional on certain events happening, such as planning being granted for development or the property being shown to be free of contamination. Again, like options, some of the same issues will arise and these need to be dealt with in a carefully drafted agreement:

- What are the conditions and what will each party do to satisfy these and who is to pay for the cost of doing this?
- Is a deposit to be paid, is this non-refundable?
- What is to be the longstop date for bringing the agreement to an end?

- What if planning is granted but is subject to adverse conditions?
- Is the purchase price to be agreed now or to be determined following the grant of planning? If the latter is there a mechanism in the agreement for valuation of the
- property? What will happen in the event of a dispute?

OVERAGE

This allows the seller to realise the full potential value of the land which they are selling, where there may be future development potential. So the land is sold now for the current market value, but if planning is granted during the overage period, then the seller is entitled to a further sum of money following this.

Possible issues arising:

- The length of the overage period
- The trigger event – what will trigger the overage and is this to be a one-off trigger evernt or will the overage still be applicable on subsequent trigger events?
- When is the overage to be payable – after the grant of planning or after the subsequent disposal of the property with the benefit of planning?
- The valuation of the overage sum – is the cost of obtaining planning to be taken into account?
- Will the overage bind successors into the title – how does the seller make sure this happens?
- How will the overage be protected?

DEVELOPMENT SITE SALES AND PURCHASES

Unlike the sale and purchase of commercial property, development land needs to have additional searches and checks to ensure that the area is fit and correct for what you have planned. These could be:

- Can the property be used for its anticipated use?
- Has planning permission been granted for the anticipated use or will this be required. If so will this be obtained pre or post completion?

WHAT PLANNING CONDITIONS HAVE BEEN IMPOSED AND ARE THESE ONEROUS?

- Is there likely to be a requirement to enter into planning agreements?
- What if any clean-up costs are likely to be required to permit the development to take place?
- Do you need any consent or cooperation from others for the development?
- Is overage an issue?
- Should additional searches be carried out?
- Should additional due diligence enquiries be raised?

We want to keep you in the loop at each stage of the transaction process; we feel that giving you updated information gives you a clearer picture of where we are and what happens next. It is vital for us to have a good working relationship where your goals are discussed and we know how best to advise you to achieve the best outcome. Our team also has particular expertise in setting up and dealing with plot sales for residential development transfers of the part and the grant of long ground leases or commercial leases on mixed-use or commercial sites.

SECURED LENDING TRANSACTIONS

There may be times when your business requires funding for various reasons. Secured lending is often desired and we have helped many businesses in the past achieve funding for their needs. Our commercial property team has the ability to carefully work with borrowers and lenders in order to achieve the best outcome for your business.

Realistically if your business is to grow and expand, there might be a time when borrowing money is a must. We have found that when lenders are dealing with commercial property there are often strict requirements to be followed.

Obtaining finance in this complex property market is not an easy task. We currently act for and work alongside all the property lenders and we can therefore simplify this procedure. We are familiar with the bank's standard paperwork and can anticipate any concerns or likely specific instructions the lenders may have. We work alongside your financial advisors, your valuer and other professionals involved

HOW CAN WE HELP?

Our commercial property solicitors have a wealth of experience in a wide variety of different areas of commercial property law. Ensuring all aspects of commercial property law are covered, our team will guide you every step of the way.

Whether you are purchasing or selling a commercial property, we understand that it can be a complex and stressful process. That's why our solicitors take a proactive, practical and commercial approach, ensuring that your transaction is completed as smoothly as possible. Our team can also assist with commercial leases, property disputes, planning matters and more.

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I'm delighted to share my positive experience with Alison and the team who demonstrated exceptional competence in successfully navigating a complex commercial property transaction. Their meticulous attention to detail, clear communication, and adept handling of intricate legal matters ensured a smooth and efficient process. I appreciate their professionalism and dedication, making the entire experience notably positive. I highly recommend their services for anyone seeking reliable legal support in complex commercial property transactions.

- AJDO Property -

From start to finish Grace kept us informed and her approachable, friendly manner ensured we had a pleasant and well informed transaction.

- Anonymous -

Sophie Abson handled a relatively small commercial property matter for us, and we excellent. Her attention to the matter and communication was first rate.

- Anonymous -

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