

Leasing Land and Commercial Property

THE NEED FOR LEGAL ADVICE?

If land or buildings are let, whether or not there is a written agreement, the arrangement will usually be subject to a statutory regime. Many of the traps contained in those regimes can be avoided with expert advice.

LAND

Land is most commonly let for agricultural purposes, in which case the farm business tenancy regime applies, unless the tenancy started before 1st September 1995.

A farm business tenancy does not give any real security to the tenant beyond the contractual term, other than a requirement for at least 12 months' notice to terminate it, if the contractual tenancy is for over 2 years. If the tenancy is for 2 years or less, it will end on the termination date, without any requirement for notice.

However, care needs to be taken in relation to informal arrangements. For example, an informal yearly tenancy would still require a full 12 months' notice to terminate it. It would not terminate without notice at the end of the year.

If land is let for the purposes of a business it will fall under the statutory regime imposed for business tenancies described below. Therefore, if there is any risk that the tenant under a farm business

tenancy may diversify into non-agricultural activities (which could convert the tenancy into a business tenancy), the landlord should serve a notice that the tenancy is to be a farm business tenancy, which will prevent the business tenancy rules applying to the tenancy.

GRAZING LICENCES can be used for short term occupation for grazing only, but these need to be carefully prepared to ensure that the occupier does not become a business tenant..

BUILDINGS are usually let under the statutory regime for business tenancies and it is important to note that a tenancy for more than 6 months gives the tenant statutory protection. This protection includes a right to receive at least 6 months' notice from the landlord to end the tenancy after the end of the contractual term, and also gives the tenant the right to apply to the court to renew the tenancy at the end of the contractual term. The landlord can resist the application for statutory renewal, but only on very limited grounds. Therefore, a tenant could remain in possession for many years.

To avoid this, the parties can agree to exclude the statutory protection, but this requires that correct procedures are followed before parties become legally bound, either by contract or lease. The exclusion of statutory protection is essential if the landlord wants to be able to exercise a break clause in the lease. It is therefore extremely important that legal advice is sought



Civil

Commercial

Conveyancing

Family

Probate

before entering into any such arrangements, in order that the necessary protections can be put in place.

Some landlords mistakenly believe that if they describe the agreement as a "licence", the occupier will have no statutory protection. This is not correct. A court would analyse the effect of a document, regardless of its title. If the arrangement between the parties has the attributes of a tenancy, then the court would uphold the tenant's statutory protection.

It is extremely dangerous for a landlord to allow a tenant to go into possession of premises without having proper documentation in place. An unwary landlord may find himself stuck with an unwanted tenant for many years to come.

LEASES

Leases of any type of property may require provisions relating rent payment, length of lease, identification of the property, repairs and decoration, usage of the property, insurance obligations, assignment and subletting, guarantees and rent deposits, and rent review. Leases of a part of a building or estate usually require additional provisions relating to service charges, and rights of access and use of services. The inclusion of such provisions give both parties clarity as to what is expected of them in terms of obligations and responsibilities as well as making

clear the rights of each party. Failure to address these may well end up in legal disputes.

MORTGAGES

If the property is subject to a mortgage, the consent of the lender must be obtained for the lease before the lease is entered into. Otherwise, the landowner may be in breach of the terms of the mortgage.

ENERGY PERFORMANCE CERTIFICATES

It is obligatory for the landlord of any property having any form of heating or air conditioning to provide the prospective tenant with an EPC, before the parties enter into the lease or tenancy agreement.

OUR SERVICES AND COSTS

Fraser Dawbarns have a commercial team whose members are all experienced in dealing with all types of leases of commercial property, ranging from agricultural land to office blocks, hotels to shooting rights, factory units to forestry and also green energy facilities. In appropriate cases we are very happy to give fixed price quotations for all stages of a transaction on request.



WE OFFER OUR CLIENTS A WIDE RANGE OF SERVICES

Agricultural Law • Commercial and Corporate Law • Commercial Property • Legal Disputes • Family Law
Children Matters • Wills and Administration of Estates • Lasting Powers of Attorney • Court of Protection
Residential Conveyancing • Lifetime Planning and Wealth Management • Employment Law