

GUIDANCE NOTE

Moving, growing, down sizing, or re-negotiating your lease? You may need to appoint an agent

Your business needs are going to change during the course of your lease and whilst its tempting to think you can save money by dealing with it yourself, this is likely to prove to be a false economy. Sometimes a quick deal with your neighbour can work out but in the current climate can you devise a strategy to reduce operating costs?, move premises?, manage staff expectations?, negotiate with your landlord within the confines of your lease provisions?, operate a break clause?, sublet in part, sell(assign)your lease and at what cost(i.e. assess its value)?reduce or limit your service charge exposure?, appeal your business rates?, market your surplus space?

You may not even have an internal manager appointed to deal with property matters so the chances are you will need a hand and a local agent is often best placed to assist.

Commercial property agents work in a similar way to those operating in the residential market. However, their fees are generally higher but this does bring added benefits notably that they will be more involved in seeing the transaction through to completion and, if RICS qualified are bound by a code of conduct. Furthermore it is common for agents to be instructed both to acquire appropriate premises as well as to dispose of space and in both cases will bring advice and knowledge to the situation. Finding premises and disposing of space can be fraught with procedural and legal challenges and it is therefore prudent to have an agent acting on your behalf.

Whether you are looking to occupy a shop, (or other retail premises), an office or industrial premises each type has an agents' representative body and can make finding the right agent for you much easier. They are:
The Office Agents Society (www.officeagentsociety.com <<http://www.officeagentsociety.com/>>)
The Shop Agents Society (www.shopagentsociety.com <<http://www.shopagentsociety.com/>>)
The Industrial Agents Society (www.shedshifters.co.uk <<http://www.shedshifters.co.uk/>>)

WHY SHOULD I APPOINT AN AGENT?

If you are influenced by the image of a residential agent then this is an important question to ask. A commercial agent's involvement is far more extensive than that of a residential agent and their knowledge is key when agreeing the lease, (if occupying a leasehold property) or any covenants that may infringe on the value of a freehold property. In all cases the value of the interest (whether leasehold or freehold) can be affected if an agreed lease is not "commercial" and favour the landlord too much or if a freehold has a defect in the Title.

An agent is appointed to make you aware of risks and guide you towards benefits, via:

- Their Local presence/market share
- Their reputation and relationships with the local Agency Community
- Their Database of comparable transactions/Ownership knowledge/Tenant knowledge/ Market Terms
- Their marketing skills
- Their understanding of Tenants and the negotiation process (i.e. interaction with other parties to the deal, lawyers etc)

Many commercial agents are members of The Royal Institution of Chartered Surveyors (RICS) and are bound by their Rules of Conduct. The RICS's website (www.rics.org) <<http://www.rics.org/>> sets out these rules.

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SO, WHAT BENEFITS ARISE FROM APPOINTING AN AGENT?

- Save time. How is this possible? Any appointed agent will need to be proactive in guiding any 'would- be' tenant through the selection and negotiation of any agreement and you, in turn, as the client, should nominate a person who can act as the point of liaison for that agent. The Agent must therefore offer a time saving service plus transactional expertise, performing a quasi Project Management role presenting concise advice whilst choreographing the various parties to the transaction and isolating the client from unnecessary detail.
- Value for money. The appointed agent should have (and be able to prove) better market knowledge than you, better contacts in the market than you, better data than you and better procedural knowledge than you; all of these points should deliver the right result saving you time which should be better spent elsewhere as part of your core business and unnecessary money in the process. Knowing how far to push negotiations and managing your expectations should prove invaluable.
- Professional indemnity insurance. What is it and how does it help? This is an insurance policy protecting you and the agent should the agent fail to spot anything. Without an agent the only person you can blame is yourself. An agent working as a Chartered Surveyor requires Professional Indemnity Insurance which any client can rely upon should advice received be misleading or wrong. Check and make sure any appointed agent has the requisite insurance cover. Don't be afraid to ask for evidence.
- Achieving the best result. Don't be afraid to incentivise the agent through the fee structure to get you the best result. This can be time bounded, value bounded or concession bounded.

HOW FLEXIBLE CAN YOU MAKE YOUR LEASE?

Business surveys over time have established that property and Staff costs are the two largest overheads for companies. Being aware of how valuable your lease can be is important and can be turned into an asset. Too many companies end up with a lease that becomes a burden to them because they were not able to design flexibility into the lease at the time of negotiation. In many cases the flexibility is required to avoid future costs that may be forced on the business. A simple and yet important example of this is service charge costs. As with any asset a building can be bought and sold at any time and any landlord will have different reasons for holding onto a building but any owner would like to see the value of his property rise. This may have an impact on the service charge, pushing occupational costs higher.

Importantly a flexible lease could place any tenant in a strong position "future proofing" any business against unforeseen and often unnecessary increases in service charge. You should look to negotiating a service charge cap, for example.

Do you know if you could generate a rental premium by subletting or assigning your lease?

If market conditions allow, you could make considerable savings by moving at the right time, subletting excess space or negotiating your break clause effectively such that you actually remain in occupation but benefit from a

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rental reduction and/or are granted a rent free period. Around 60% of break clauses are not operated, so why pay for such flexibility and not use it?

Look to the alienation provisions in your lease (i.e. your rights to sublet space/sell your lease) and establish exactly what you are permitted to do with or without landlord's consent, in terms of offloading surplus space, sharing occupation with others (or associated companies) etc and the rental levels that you are permitted to agree to. As an occupier you should always be looking to be able to sublet at prevailing market rental levels, rather than having to stick to passing rents which may be considerably higher.

When negotiating a new lease, have maximum flexibility in mind for the future, allowing you to vary the occupancy of your space to suit your business needs. The cost of such flexibility can often be de-minimus compared to the benefits it generates for you.

RICS PROTECTION

As a safeguard for any advice being given it is recommended that your appointed agent is a member of the RICS (www.rics.org <<http://www.rics.org/>>). As a governing body for the profession there are 9 core values enshrined in its membership and as a client you should be benefiting from all of these:

- Integrity
- Honesty
- Openness and transparency
- Accountability
- Acting within limitations
- Objectivity
- Respectfulness
- Setting a good example
- Prepared to make a stand (against malpractice)

Case Law also establishes the principle of an agent owing a Duty of Care to his client making him aware of market developments that might influence a transaction.

Should you need to contact our advisers about anything contained in this note then please feel free to call us on 0800 865 44 50

This Guidance Note is not a substitute advice on specific matters and should not be seen as providing legal advice.