hicks baker
commercial property

Top tips

Lease Renewals
Plan Ahead

The trend for shorter leases is now well established in the market and therefore there is more frequent need to review existing lease terms and have a very clear strategy in place well ahead of the lease end date.

1 Inside or Outside of the Act?

One of the most important aspects that both parties need to establish is whether a lease is protected by the Landlord and Tenant Act 1954 or has been "contracted out" – this is commonly referred to as being 'Inside the Act' or 'Outside the Act'. In general terms, if you have a lease of commercial property for more than 6 months, and the lease does not include a contracting out order, then it will most likely be protected.

2 Unprotected Leases

For a tenant, an unprotected lease means that they have no right to remain in the property after the expiry date. Therefore, it is important that they review their property requirements, to decide if the space still works well for their business, at least 2 years before the lease ends. This is particularly relevant for property types or locations that are in high demand. In such a situation, the Landlord will consider that they could easily relet the property and therefore they may be quite bullish with the terms they are prepared to agree.

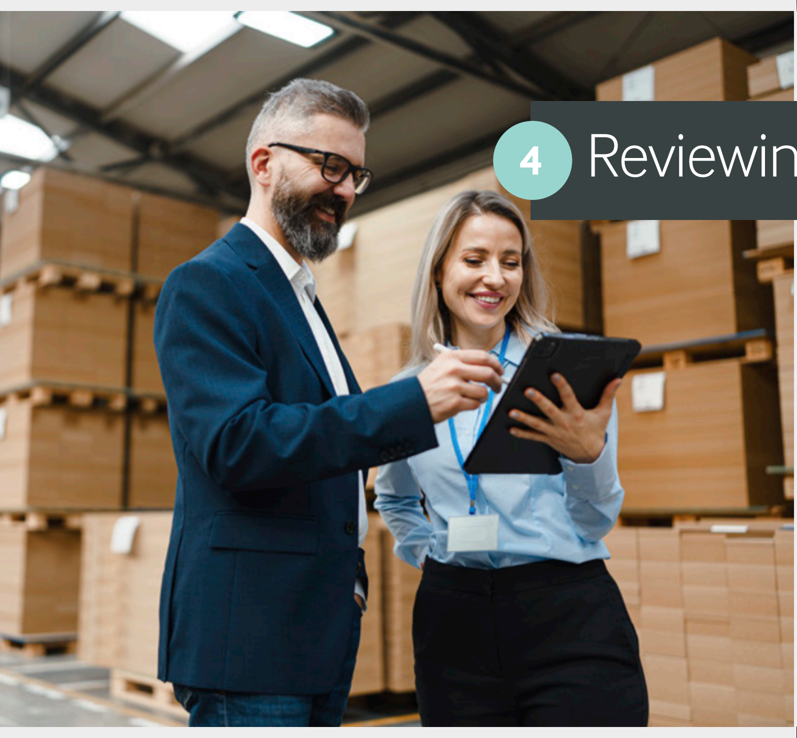
If the tenant wants to remain in occupation and take a new lease, then it is well worth seeking to agree terms with the landlord early. That way if acceptable terms cannot be agreed there is sufficient time to relocate before the lease ends. Obviously the tenants negotiating position weakens the closer it gets to expiry, and becomes very weak if they are no longer capable of vacating before the lease expiry date.

3 Protected Lease Process

A tenant of a lease that is 'Inside the Act' who does not wish to remain in occupation can terminate their lease by vacating before the end date in the lease or by serving a Section 27 Notice (this should be undertaken by a solicitor). A tenant cannot end a lease by vacating after the end date in their lease, they must serve a Section 27 notice in that instance.

For 'Inside the Act' leases, where a tenant wishes to remain in occupation, formal notices need to be served by either party in order to properly bring the old term to an end and which can be accompanied with a request for a new lease on stated terms. If no notices are served by either party, then the lease will effectively continue and the tenant will then be 'holding over' on the terms of the existing lease.

Assuming there is a mutual wish to renew the lease then this can either be by agreement before or after the service of a notice, or through the court renewal process.



4 Reviewing the Rent and Lease Terms

The rent for the new lease must be a market rent. Therefore, because the rent can go down as well as up the decision on whether to serve a notice is a strategic and tactical one for both landlord and tenant.

For both parties, taking professional advice on the dynamics of the local commercial property market is essential, as is assessing their property needs, so that they can weigh up the benefits and draw backs of the various actions they could take.

What You Need to Do

- Check the lease and make a note of the expiry date
- Identify if your lease is protected by the Landlord and Tenant Act (your surveyor or solicitor will be able to help you with this)

For both landlords and tenants, the best advice is to start planning for a lease expiry as early as possible, with a specialist lease advisory surveyor.

For more information on how we can assist you, please contact:

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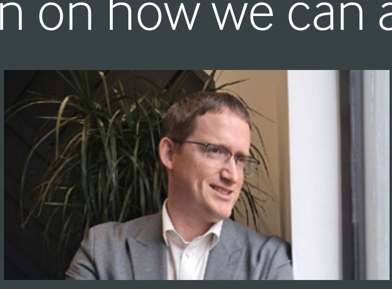

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