



**NFRN**

*The voice of the independent retailer*

# NFRN Business Property Advantage

WE WORK ENTIRELY FOR YOU AND YOUR BUSINESS



BUSINESS PROPERTY  
ADVANTAGE

## PROPERTY ACQUISITIONS

Property is an expensive resource – it can easily turn from a business asset to a liability. The true cost of a property is never just the rent but all the other costs and risks as well as opportunities allocated to you under a contract or lease, therefore it is important to obtain professional support from BPA to ensure your key to success and a contract that is tailored to meet your needs.

 [For more information refer to the NFRN Factsheet on Property Acquisitions]

## RENT REVIEWS

Rent Reviews are generally ‘upward only’ at 3 or 5-yearly intervals by reference to the start of the lease. The rent to be assessed is generally the ‘rack rented’ ‘market rent’ that would be agreed between a ‘willing landlord’ and a ‘willing tenant’ on an ‘arms-length’ basis. Clearly with an existing lease in place, this is not an arms-length transaction and the terms of the lease and hypothetical assumptions set out in the rent review clause mean that the rent actually agreed is rarely in line with market rent. We therefore recommend that you obtain professional support through BPA, prior to agreeing any rent review with your landlord, to ensure you are paying a true market value.

 [For more information refer to the NFRN Factsheet on Rental reviews leases expiries and lease breaks].

## LEASE BREAKS

These can be complex or may be quite simple to effect. Early advice is essential – therefore contact BPA for advice as soon as the issue occurs. A simple break clause requires one party to give notice on the other that the lease will end and that vacant possession is to be given on that date, possibly with all rents demanded paid up to date, for the break to be effective. A more complex provision may require the tenant to have materially complied with all the terms of the lease.

The definition and consequences of material compliance need to be understood and risk assessed. In such cases, there is the risk of a dispute after the premises have been vacated when the break clause is deemed to be not operated. In addition to early advice, an early dialogue is essential with the landlord to ‘prior agree’ what works and standard of work is considered acceptable, or to negotiate a cash settlement in lieu of these works. Time needs to be allowed to address reinstatement issues if the break is conditional on this work being materially completed or otherwise to reduce a dilapidations claim which may arise after a break has been affected. Tenants are always best placed at the Heads of Terms stage if they wish to avoid future problems with break clauses and by taking proper professional advice.

## LEASE EXPIRIES

Leases are for a fixed period and give exclusive use of a property. They can be verbal agreements or made in writing through correspondence and if over three years in length, they must be by deed. Leases can be inside or outside ‘the Act’. Landlords perceive protection of the Act as a hindrance – it reduces ‘flexibility’ and adds to cost and time, and, as with rent reviews, often leads to below ‘rack rented’ market rents. Therefore, where possible, they may refuse to grant leases within the Act. This means that tenants do not have a statutory process to renew the lease, to seek independent adjudication of lease terms in accordance with the Act and level of market rent in particular and compensation in the event that the landlord will not grant a new lease on prescribed terms.

In these situations it is imperative that the tenant seeks early advice and has a contingency plan for business continuity. It may be a reality that the landlord will keep his ‘cards close to his chest’ until close to the expiry date to gain commercial advantage. If a lease outside the Act is not renewed by the expiry date then the landlord has the right to recover possession or dictate the terms that it requires. Dilapidations will apply. Assuming the lease is inside the Act, it will continue on the same terms and conditions until it is brought to an end in accordance with the Act. The tenant has to be using the premises for its own business purposes to be protected. A flat over a shop occupied by a residential sub-tenant not connected with the business may be excluded from any renewal.

To ensure the terms for a new lease is set out tailored to meet your business needs, please contact BPA for more support.

 [For more information refer to the NFRN Factsheet on Rental reviews leases expiries and lease breaks].

## DILAPIDATIONS

The issues related to dilapidations can be somewhat complex – there is an important distinction between dilapidations and reinstatement. ‘Reinstatement’ refers to a tenant’s obligations to return a property in repair, reinstated and redecorated in accordance with the lease terms at its own expense at the lease end (however so determined). ‘Dilapidations’ refers to breaches of lease covenants that relate to the condition of a property during the term of the tenancy or when the lease ends. The landlord’s claim is for damages which is in turn limited by the provisions of S.18(1) of the Landlord and Tenant Act 1927 as appropriate.

A tenant should obtain early advice through BPA to consider whether it is more advantageous commercially to undertake reinstatement before lease end or negotiate a cash settlement after expiry.

 [For further information, please refer to the NFRN Factsheet on Dilapidations].

## HOW WE CAN HELP

### LEASE BREAKS, EXPIRIES & RENT REVIEWS

- NFRN BPA understand the business position
- Offer advice on strategy and approach
- Provide valuation and other advice as needed
- Manager or undertake negotiations to settlement
- Advise on dispute resolution as required

### DILAPIDATIONS – EARLY ADVICE IS KEY

- Difference of reinstatement and dilapidation
- Review lease
- Obtain cost advice
- Advise on negotiation strategy to mitigate cost
- Negotiate with landlord to settlement
- Advise on dispute resolution as needed

### ACQUISITION SERVICES:

- Identify the brief and budget
- Undertake searches and short-listing
- Assist due diligence on usage and costs
- Negotiate and provisionally agree terms
- Liaise with solicitors and other professionals
- Project manage as required

**ADVICE LINE: 08081-684680**

### WHAT IT COSTS

- |  |   |
|--|---|
|  Helpline: <b>Up to 30 mins per case – FREE</b>        |  Additional 3rd Party Specialists: <b>Pre-agreed rate</b>                                    |
|  Desk Top Advice: <b>£50 per ½ hour /£100 per hour</b> |  <b>Visit to Property: £150 per hour</b><br>[mileage and out-of-pocket expenses in addition] |



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NFRN Helpline: 0800 121 6376  
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