



Glossary of Commercial Property Terms

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Abandonment

The voluntary desertion of a property or an interest in a property, where there is no intention of resuming possession of the property or of maintaining rights in it.

Alienation

Normally this refers to the transfer of a leasehold interest in property to another party - e.g. the grant or Assignment of a lease, or the granting of an Underlease. Most leases will require the landlord's consent to such a transfer and his costs in considering the terms of the assignment or underletting are borne by the tenant.

Amortisation

The gradual reduction of a debt or liability, especially by means of equal periodic payments at stated intervals which, in total, are sufficient to repay the capital or principal at the end of the given period and to pay interest on the outstanding balance throughout the period.

Arbitration

A method of settling disputes by reference to an independent and impartial third party, usually an arbitrator appointed by the President of the Royal Institute of Chartered Surveyors ("RICS") (www.rics.org) Arbitration is essentially an adjudication of the arguments of the parties, and as such differs from independent expert determination.

Assignee

A party to whom a lease has been assigned or transferred by the existing tenant ([Assignor](#)). see entry on assignment below

Assignment

Transfer of a lease from one party to the other. Once a lease has been assigned, the assignee becomes responsible to the landlord for paying the rent and fulfilling the other obligations of the lease; however, in the event of default, the landlord can require the assignor to pay the rent under the doctrine of privity of contract, where the latter still applies (invariably on leases granted before 1995).

Leases granted after 1995 will invariably require the tenant to enter into an Authorised Guarantee Agreement on assignment whereby he will be guaranteeing the performance of the incoming tenant/assignee. Depending on the covenanting strength of the assignee, it may be advisable to enter into a collateral guarantee between the tenant and the assignee so that the tenant has a direct course of action against the assignee should the landlord try to recover any rent arrears or other costs from the tenant following breach of the terms of the lease by the assignee.

Assignor

The existing tenant who is transferring his leasehold interest to a new tenant ([Assignee](#)).

Assured Shorthold Tenancy

An assured or shorthold tenancy is the usual form of letting if:

- you are a private tenant and your landlord is a private landlord;
- the tenancy began on or after 15 January 1989;
- the house or flat is let as separate accommodation and is your main home.

A tenancy will not be an assured or shorthold tenancy if:

- the tenancy began before 15 January 1989;
- it is a business or holiday let;
- no rent or a very low or very high rent is charged;
- the landlord is a "resident landlord"

Please also refer to "Tenancy Deposit Scheme" below

Government advice for tenants is available by clicking on the link below:

www.communities.gov.uk/publications/housing/assuredassuredtenants

Government advice for landlords is available by clicking on the link below:

www.communities.gov.uk/publications/housing/assuredassuredlandlords

Break clause

A clause in a lease giving either or both the landlord or the tenant the right to terminate a lease in specified circumstances, normally at a given date within the lease i.e. the third anniversary of the start of the lease. It is important to diarise the dates for the break

clause as notice will have to be given to the other party stating that they wish to operate the break at the correct time. Most break clauses are time-sensitive in that if the date is missed, you will have lost your right to exercise the break.

Building lease

A lease normally granted for long periods of time – e.g. 99 years, or even more. They were granted from freehold owners to building contractors for a large entry fine, with covenants specifying that the builder was to build houses on the land on behalf of the owner which will become the property of the landlord after the lease expires. Many leasehold flats in London and other large cities are still held under building leases.

Capital value

The value of a freehold or leasehold asset as opposed to a periodic value such as rent.

Clawback

See [Overage](#)

Confidentiality clause

An agreement between the parties to a lease or a sale, that some, or all of the terms will remain confidential between the two contracting parties. Such clauses may also require that neither party will make any announcement about the sale contract or any ancillary matter before on or after completion. Third parties can however compel the revelation of such terms (for example, where they are required to establish comparables) by means of a subpoena. A common weakness of such an agreement is enforceability when dealing with large companies given that staff may have access to sensitive information.

Contracting out

An agreement between the landlord and tenant that the tenant will have no right to renew the lease at the end of the contractual term and will not have any right to compensation for the same purpose. This is commonly known within the profession as an agreement between the landlord and tenant that the security of tenure provisions of Part II of the Landlord and Tenant Act 1954 shall not apply. (Section 38(4)) of the 1954 Act makes specific provision for this.

The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 requires that a notice is served by the Landlord to the Tenant, and a declaration made or sworn by the tenant stating his understanding of the terms of 'contracting out' prior to the commencement of the lease for such a provision to be effective.

Covenant

The word generally has two meanings:

First, in the strict legal sense, it refers to clause in the lease requiring the tenant (or landlord) to do something or to refrain from doing something; see Restrictive Covenant below.

Second, it is used in the wider sense to denote the worth of a tenant (or, bearing in mind the doctrine of privity of contract, that of previous assignors) and hence the risk of default, which will have a bearing on the value of the lease.

Demised premises

The property itself being let by the landlord to the tenant.

Determination

The bringing or coming to an end of a lease, or an estate or interest in property, especially by notice as expressly provided for in the lease or as a consequence of a fundamental breach of a lease condition. See also termination.

Distraint

The enforcement of distress for rent.

Distress for rent

A remedy enabling landlords to recover rent arrears by the seizure and sale of goods within the defaulting tenant's property.

Energy Performance Certificate ("EPC")

A commercial EPC provides an energy rating for a building which is based on the performance potential of that building. Services such as lighting, heating and ventilation) are taken into account as well as the way in which these services are controlled. The industry standardised A - G energy rating given on the certificate will reflect the intrinsic energy performance standard of the building relative to a benchmark. This rating could then be used by potential buyers or tenants to make comparisons between properties. The commercial EPC is accompanied by a secondary report that provides recommendations on how the energy performance of the building could be enhanced.

Please refer to government advice contained within the link below:

www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance

Estimated Rental Values (ERV)

An estimate of the rental which a property is likely to command in the open market at a given time.

Estoppel

A principle in English law that a person cannot go back on something he has previously affirmed. For example, a tenant serving a counter notice to a section 25 notice cannot subsequently argue that the latter was invalid, unless he expressly reserved his position.

Forfeiture

Forfeiture of a lease occurs when the landlord exercises his right to regain possession against the wishes of the tenant, where there is a breach in a condition of the lease, or a breach of a covenant.

Freeholder

A legal entity, holding an estate "fee simple absolute in possession".

Full repairing and insuring (FRI) lease

An FRI lease requires the tenant to pay all running costs, e.g. maintenance, rates and insurance.

Head lessee

The highest leaseholder in a sub-tenancy or series of sub-tenancies, who pays head rent to the freeholder.

Headline rent

The rent apparently being paid, that may not take account of concessions such as rent-free periods.

Home Information Packs ("HIPs")

Home Information Packs have been suspended indefinitely as of 21st May 2010 until such time that a bill is passed repealing the law relating to HIPs to dispense with them entirely

As part of the previous Government's commitment to making buying and selling properties easier, Part 5 of the Housing Act 2004 introduced a legal obligation on home-owners or their selling agents to have a Home Information Pack available when marketing properties for sale. This is set out in more detail in the Home Information Pack (No2) Regulations 2007 and associated Procedural Guidance. The Government reasoning for HIPs implementation was also set out in their Regulatory Impact Assessment.

The aim behind HIPs was to provide important information to prospective purchasers at the very start of their interest in a new property, giving increased transparency on key issues and meaning any offer to purchase is based on an informed decision. This in fact resulted in an extra layer of bureaucracy and cost laid at the seller's door even prior to

marketing the property. However, despite the removal of HIPs from the conveyancing procedure, the requirement for [EPCs](#) remains.

www.homeinformationpacks.gov.uk

Independent expert determination

An independent determination of the rent to be paid on review. Independent expert determination differs from arbitration in that the independent expert is not confined to the evidence presented by the parties.

Indexation

The regular adjustment of a rent in accordance with a specified index e.g. the [RPI](#).

Interim rent

A landlord may apply to the court to fix an interim rent when he has given notice of termination of a tenancy or where the tenant has served notice of a request for a new tenancy on the landlord.

Investment yield

Annual rent that is passing as a percentage of the capital value.

Lessee

A party to whom a property has been let i.e. the Tenant.

Lessor

The party letting the property (i.e. the Landlord).

Market rent

The best rent at which a property might reasonably be expected to be let with vacant possession in the open market, with a willing landlord and tenant, taking full account of all terms of the tenancy offered.

Mesne landlord

An intermediate landlord.

"O'May rules"

The principle that the terms of a new lease, will generally follow the terms of the existing one; the onus is on the party proposing a change to show that it is fair and reasonable (O'May v City of London Real Property Co Ltd, 1983).

Open market rent

See market rent.

Open market rent review

Where the rent review clause provides that the rent on review should be based on the open market prevailing for new lettings.

Option to Purchase

A legal document giving a person a right to buy. In the document the price and period are specified. A fee is paid and if the person proceeds to buy the property the amount of the fee comes off the purchase price. If the person does not proceed to buy the property the fee is forfeited to the seller.

Overage

Overage is a potential right to receive future payments in respect of land. The potential right becomes an actual right when the relevant trigger event occurs.

Trigger events can include:

- Grant of planning permission for change of use or development
- Implementation of planning permission
- Practical completion of development
- Sale or lease of property with the benefit of planning permission
- Sale or lease of completed development

Over-renting

This occurs when the rent passing exceeds the current open market rent

Overriding lease

An intermediate lease which the landlord grants to another party for a term longer than that of an existing lease, thereby creating a landlord and tenant, but not a contractual, relationship between the new and old lessee.

Premium

The price an actual or prospective lessee pays to a lessor, usually in return for the rent being reduced to below what otherwise would be payable. Or a sum paid at the outset for the purchase of a lease. (See also [Reverse](#) premium.)

Prime covenant

The best quality of investment, represented by [prime](#) property.

Prime location

The most desirable or sought after location.

Prime property

A term used to define property of particular interest to investors. Broadly, prime property is likely to be a modern or recently refurbished building, finished to a high specification, well situated in a commercially strong geographical location and let to a good tenant.

Privity of contract

The principle in English common law that landlord and tenant continue to have obligations under the lease despite subsequent assignment. Privity of contract was abolished for new leases coming into force from 1 January 1996. Leases entered into before then are still subject to privity, but landlords wishing to sue previous tenants still bound by privity have to serve notice within six months of rent or service charges becoming due. The current legislation enables landlords in certain circumstances to require the outgoing tenant to guarantee the performance of the incoming tenant, until there is a further assignment.

Quiet enjoyment

Most leases contain a [covenant](#) for quiet enjoyment, entitling the tenant to enjoy his lease without lawful entry, eviction or interruption.

Rack rent

The best market rent obtainable.

Re-entry

A landlord may exercise his right to regain possession of premises by peaceable re-entry where there has been a breach of a condition by the tenant, or a breach of a covenant of a lease with a [forfeiture](#) clause.

Rent passing

The actual current rent being paid.

Rent review

Leases generally contain clauses providing for a periodical review of the rent, say at five yearly intervals. The lease will generally specify what the basis of the review is to be: e.g. the open market rent prevailing at the time of the review, or, as is frequently the case, upwards only (see [upward](#) only rent reviews).

Rental value

The rent that a property might reasonably be expected to command in the open market at a given time, subject to the terms of the lease.

Restrictive covenant

A [covenant](#) in a lease restricting the tenant in some respect, e.g. a [covenant](#) in a shop lease providing that only a particular type of trade may be carried out at the premises. More generally, an obligation in a deed whereby the covenantor undertakes to refrain from some act affecting the land of the covenantee.

Retail Price Index

The Retail Prices Index ("RPI") is the most familiar general purpose domestic measure of inflation in the United Kingdom. It is available continuously from June 1947. The Government uses it for uprating of pensions, benefits and index-linked gilts. It is commonly used in private contracts for uprating of maintenance payments and housing rents. It is also used for wage bargaining.

www.statistics.gov.uk/STATBASE/tsdataset.asp?vlnk=7173

Reverse premium

On assignment, the payment of a sum of money by the assignor to the assignee a sum of money to reflect the unfavourable lease terms, e.g. where there is over-renting.

Reversion

The return of property to the landlord on the expiry of a lease.

Sale and leaseback

An arrangement whereby a property is sold, with the vendor simultaneously being granted a lease on the property by the purchaser, generally either at a rack rent or at some lesser rent related to the price paid.

Securitisation

The conversion of assets into tradable securities.

Security of tenure

The statutory right of a tenant to renew the lease at the end of a term. Part II of the Landlord and Tenant Act 1954 gives business tenants security of tenure, but parties follow the procedure set out in The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. See [contracting](#) out.

Service charge

The amount a tenant pays for services his landlord provides.

Side agreement

Terms agreed separately by landlord and tenant, or by buyer and seller, which do not form part of the lease or contract of sale.

Stamp Duty Land Tax (“SDLT”)

Broadly speaking, SDLT is charged as a percentage of the amount paid for property or land when it is bought or transferred. Higher percentage SDLT rates apply to higher-value transactions. The amount payable can also vary depending whether the property is being used for residential or non-residential purposes, and whether the property is sold as a freehold or leasehold.

The lowest rate of SDLT payable is 1 per cent of the transaction value. More valuable properties are charged at 3 or 4 per cent. The threshold at which SDLT becomes payable is currently £175,000 for residential properties and £150,000 for non-residential.

If the property value is above this threshold, SDLT is charged on the entire value.

Up to date rates and thresholds can be found by clicking the link below:

www.hmrc.gov.uk/sdlr/rates-thresholds.htm

SDLT is also payable on the granting of leases. The amount of Stamp duty payable on new leases and agreements depends on;

- The premium which is the capital
- The average annual rent

If duty is payable under both the heads, the duty will be calculated separately on each of these two elements and the two amounts will then be added together. The total is then rounded up to the next £5.

Tenants should also be aware that any VAT payable on the rent will also be taken into account in calculating the SDLT due.

Subletting

Where the tenant lets part or all of the premises to a subtenant, as permitted by the terms of the lease. It differs from assignment in that the [head](#) lessee remains responsible to the landlord for the payment of rent and fulfilment of other obligations.

Surrender

A landlord’s willingness to release a tenant from the terms of the lease (known as a 'Surrender') will depend upon a number of factors:

1. The amount of time he thinks it will take to re-let the space
2. The rent the tenant is paying relative to an achievable rent in the current market
3. How much the tenant is willing to pay (relates to the above two points)

When considering this negotiation it is important to remember the landlord is not only forgoing his rent, as he will also have to pick up the rates, utilities and insurance costs until the shop is re-let. He will also have to pay back your rent deposit (if you gave one, unless this has been taken into account in the negotiations of the surrender)

Tenancy Deposit Scheme

The Tenancy Deposit Scheme was established under the Housing Act 2004. It requires landlords to register details of the start and end of all Assured Shorthold Tenancies on which they take a deposit. Since 6 April 2007, all deposits (for rent up to £25,000 per annum) taken by landlords and agents for assured shorthold tenancies (“AST”) in England and Wales have had to be protected by an authorised tenancy deposit scheme. The schemes:

- allow tenants to get all or part of their deposit back when they are entitled to it
- make any disputes easier to resolve
- encourage tenants and landlords to make a clear agreement from the start on the condition of the property

There are two types of tenancy deposit protection scheme available for landlords and letting agents. All schemes provide a free dispute resolution service.

www.direct.gov.uk/en/TenancyDeposit/index.htm

Termination

The coming or bringing to an end of a lease, by mutual agreement, by the effluxion of time, or by the exercise of a right of one of the parties.

Transfer of Undertakings (“TUPE”)

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) preserve employees' rights, terms, and conditions when a business or undertaking, or part of one, is transferred to a new employer, normally following a sale of the business.

A useful guide is available by clicking the link below:

www.berr.gov.uk/files/file20761.pdf

The existing terms and conditions of the employee's contract of employment will transfer automatically to the new employer. This means that the employee will normally carry on working for the new employer as before. If the new employer refuses to meet the terms of the contract, this will amount to a breach of contract.

In buying or selling a business, the procedure required under TUPE are quite complex, with considerable damages payable for any breaches, so it is highly advisable to seek legal advice on this issue before proceeding with any sale or purchase

Turnover rent

Where part or all of a rent, especially of retail premises, is based on a specified proportion of the tenant's turnover.

Up/down review clauses

See [open](#) market rent review.

Upward only rent reviews

Clauses in leases providing for regular reviews, at which the rent will be fixed at either the current rent passing or the open market level, whichever the higher.

Waiver

The act of voluntarily giving up, or intentionally relinquishing, a claim, benefit or interest. A landlord waives his right of [forfeiture](#), when a tenant is in breach of [covenant](#), if he knows of the breach and accepts or demands rent or unequivocally recognises the continued existence of the lease.

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This glossary is a practical and easy-to-use guide to commercial property terminology and vocabulary used within the property industry.

While every effort has been made to present accurate and up-to-date definitions, this glossary should be used as a resource, not as an authority. The property industry is a complex and rapidly changing area, and it would be impossible to include every applicable term. Users should refer to standard texts and reference works for more detail.

This information is provided with the understanding that if legal advice is required the services of a competent solicitor should be sought

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