

## **June 2009 COMMERCIAL REALITY OF A LANDLORD'S PREFERENCE TO SAY NO**

The universal understanding that a landlord, more often than not, is in the driving seat when negotiating terms of a lease, assignment, sublease or any other property transaction has been very much diluted by the current economic climate which has had a knock-on effect to the property market.

Even the government thought that the landlord was always in the stronger position and so introduced guidelines for landlords to follow when negotiating commercial property deals.

But with the market flooded with properties and the banks not willing to lend, landlords are having to re-think their approach to deals and in a large number of transactions even make substantial concessions in order to get the deal done.

From recent personal experience, one could even go as far as to say that a landlord is coming to negotiations as the weaker party as their approach is one of seizing any opportunity and more fundamentally than that, getting a paying tenant in and signed up.

It was only some 18 months ago that a tenant could be fairly certain that on a request for consent the landlord would require and demand that the provisions in the lease for such consent were followed strictly; otherwise the landlord would not consider such deal. Yet now, in the same sort of situation a landlord is much more likely to consider concessions and even waive various rights to get the deal done. For example, although a lease may state that any rent on a sublease must be no less than the passing rent the landlord may consider waiving this provision on a short term sublease or on an assignment approving an assignee who is less favourable than the assignor, even if the existing lease provides that the landlord can expect the same covenant strength. Furthermore, a landlord is more likely to permit works to the building, which under the provisions of the lease they could refuse, if the tenant wants to stay and invest time and money in the building.

The most common concessions on the grant of a new lease, unsurprisingly, involve the payment of rent on a monthly rather than quarterly basis, the value of the rent and even caps on rent reviews.

However, landlords should always be cautious when considering any concessions, bearing in mind that the present market situation is inevitably going to change, and ensure that all terms of any such concessions are documented and drafted with care.

The above are just a taster of what landlords are willing to concede in the current climate and the fact of the matter remains that a landlord would much rather have a paying tenant in their property, even if it means rent concessions or waiving provisions to achieve this.

So, the commercial reality for a landlord to say no to a deal because certain requirements are not fulfilled is, for the time being, significantly reduced if not extinguished.

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