

## Break clauses Points for consideration

### What is a break clause?

- A break clause can be included in a fixed-term lease allowing either you or your landlord to terminate the lease early.
- Exercising a break clause brings the lease to an end. However, where the landlord breaks the lease, there is legislation in place that may allow your business to remain in the property after the lease has ended.
- Depending on how your lease has been drafted, the right to break the lease may arise on one or more specified dates, or it may be exercisable at any time during the term of the lease on a rolling basis.
- A break clause may only be exercised if any conditions attached to it have been satisfied (for example, providing vacant possession). A break clause will be strictly construed by the courts and any conditions must be strictly performed.

### Practical issues for a tenant to consider when exercising a break clause

- Once a break notice has been served it cannot be withdrawn unilaterally, so make sure that you are certain that you intend to break the lease. Any mutual waiver of the notice will be deemed to constitute the grant

of a new lease, which takes effect from the date of expiration of the break notice.

- Make sure you comply with all the relevant requirements in the break clause and keep evidence of your compliance to help protect your position.
- Ensure that you serve the break notice in good time and strictly in accordance with the terms of the lease.
- Keep evidence of the method of posting or delivery of the notice.
- If the notice is being served by an agent, make sure your landlord is aware of the existence of the agency and its authority.
- Consider carrying out a compliance audit with your surveyor's advice before serving the break notice. You can then take steps to remedy any breaches to ensure compliance with its covenants.
- Pay any outstanding sums due, even if these are in dispute. Payment can be made on a "without prejudice" basis and the matter disputed later.
- Ask your landlord for confirmation of the steps you need to take to comply with any conditions. You could ask your landlord to prepare a schedule of dilapidations in

relation to any repair works. A schedule of dilapidations is a list of items that are in need of repair and which you have responsibility for, due to the repairing obligations under a lease.

- If you agree to carry out works to the property before the break date, be careful to ensure that the works are completed and vacant possession is given by the break date.
- Consider asking your landlord to accept the break notice on payment of an agreed amount as liquidated damages in relation to any outstanding breaches of covenant. Ensure that any waiver of a condition by your landlord is not made "without prejudice" and that it is clear to which condition(s) the waiver applies.

*Our Commercial Property Team can provide specialist advice in a broad range of commercial matters and would be happy to speak with you without commitment to see if we could help you.*

*Please call Mark Dewey or Andrew Doinik on 01233 625 711 for more information, or email them on [mjd@hallettandco.co.uk](mailto:mjd@hallettandco.co.uk) or [aad@hallettandco.co.uk](mailto:aad@hallettandco.co.uk).*