LawNet

Commercial Property

Making the right move

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This booklet deals in general terms with a complex subject. Whist we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to in this booklet.

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Commercial Property is a complex and changing area of law. When you are involved in commercial property transactions, whether as an owner, occupier, investor or developer, swift and accurate legal advice is essential.

Our law firm delivers a quality assured service, focussing on your business needs, committed to securing you the best result. We regularly deal with a wide range of commercial property work from commercial leases and construction issues to environmental and planning law.

Our areas of expertise include;

- Buying and selling commercial property
- Commercial leases
- Construction
- Environmental and planning issues

This guide covers some of the basic elements of a commercial property transaction, but this is a complex area and there are many other factors to consider, so you should seek advice early.

Buying and selling

If you buy a freehold property you own it outright, whereas if you buy leasehold property you are a tenant and have a right to occupy, subject to the terms of the lease.

The best option for you can vary depending on your individual situation and preference.

Buying a freehold can give you more control over what you do with the property and you can benefit in any rise in value of the property. Buying leasehold can give you more flexibility, with a smaller initial outlay. A freehold purchase can have a higher initial cost but over the longer period can be more cost effective than renting premises.

It is your responsibility to ensure you survey and inspect any property. This applies not only to the actual property but also the equipment, fixtures and fittings that may be

included in the transaction. Certain rights, such as occupation of a footpath across the land, wouldn't show up in title deeds or normal searches.

If instructed we will make sure all the necessary searches are completed and investigated, highlight any potential conflicts and ensure that your legal interests are protected.

Commercial leases

Also known as a business tenancy, a commercial lease is essentially a contract between a landlord and a tenant. It allows a tenant to occupy a property for a certain length of time, subject to certain rights and obligations that are set out in the lease.

The wording of a business tenancy is very important as it will include the terms and conditions of factors such as;

- The rights of landlord and tenant
- Liability for repairs, maintenance and decoration
- Alterations of the commercial property
- Transferring the business tenancy
- Security of tenure
- The tenant's use of the commercial property
- Rent, interest and rent review.

We can make sure that any business tenancy drawn up suits your business needs, or can advise on the terms of any existing business tenancy you may have.

It should be noted that there are considerable differences between a short-term (3 months to 3 years) and long-term leases. For example, long-term leases over 7 years in England and Wales have to have a certain set of clauses, known as LR1 to LR14 (which includes lease date, title number, prohibitions or restriction disposing of the lease).

Again we can advise in this area.

Construction

There are three main options for structuring a construction project; design and build, the traditional method and management contracting. Whilst there are other options available these three form the majority of contract structure.

Design and build

- A contractor takes responsibility for the entire project employing a design team and taking control of the design and construction

Traditional method

- The developer employs the design team and a contractor is responsible for construction only.

Management contracting

- A developer takes on a design team directly and a contractor as a management contractor, with responsibility for managing the project but no direct construction responsibility.

Selecting the best structure for your project is vitally important from the outset. As solicitors with vast experience in construction projects we would be delighted to help decide what is best for you.

Collateral Warranties

Another important area of construction that you might have to consider is that of collateral warranties. A collateral warranty is intended to provide a contractual remedy for parties with an interest in the construction project, such as a purchaser or a tenant, but who do not have a direct contract relationship with those doing the work on the project. Collateral warranties usually include items such as standard of care & material used, requirement of professional indemnity insurance and copyright issues amongst others.

The negotiation and drafting of collateral warranties is very complex. As a firm we have experience in this area and would be happy help.

Dispute Resolution

Unfortunately despite the best laid plans disputes sometimes still occur. If parties cannot resolve their dispute between themselves, there are a number of options for resolving them. These include Alternative Dispute Resolution (ADR) methods, such as adjudication and arbitration or taking court action. Again, if you find yourself in this unfortunate position, we have experts to help and give advice in this matter.

Environmental and planning issues

Any commercial development is likely to come into contact with planning and environmental law issues.

Planning law

- Planning law covers a wide range of areas such as the control of commercial and residential development, regeneration, listed buildings, rights of way, highway law, village greens and much more.

  Our planning lawyers can help with all aspects of the planning system, including planning applications, negotiations with planning authorities, third party objections, appeals, enforcement of planning controls and appeals against enforcement and compulsory purchase and compensation.

Environmental law

- Environmental law is a very complex area with serious consequences for lack of compliance. There are a wide range of issues to consider from tree preservation to serious financial consequences of liability for contaminated land.

  We can provide advice and support on factors such as environmental liabilities, contaminated land, environmental assessment, waste management, environmental compliance and risk management.

What should I do next?

There are many other factors involved with commercial property law, such as landlord and tenant issues and corporate property finance. Our commercial property team would be delighted to help in all or any area of commercial property law.

If we have acted for you before, then please contact the person that you last dealt with and they will make the necessary arrangements.

If we have not acted for you before, then please contact one of our team on the number provided overleaf.

Please contact your LawNet Solicitor to discuss Commercial Property Law

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