

The legal practicalities of downsizing your office space



The impact of the Covid-19 pandemic has seen the commercial real estate sector decline.

Whilst not all sectors have been adversely affected (supermarkets/distribution) the retail and office sectors have been particularly hard hit.

How the pandemic will affect the vision of the high street in the future remains to be seen.

For the office sector, though, it seems clear that flexible working and re-designed office spaces to promote wellbeing, sustainability and safety at work are overtaking the more traditional office setup with rows of desks and a water cooler in the corner.

If, as an organisation, you are considering downsizing but you are locked into a lease what are the options available to you?

Exercising a break

Exercising a break right can enable you, as the occupier, to seek new space/use the break to negotiate more favourable terms for the same space.

Top tips

- Ensure that the break notice is served strictly in accordance with the break clause and/or notice provisions of the lease. All too often break notices are sent to the wrong address or sent by email when the terms of the lease do not permit service by email;

- Comply with each and every condition attached to a break right. Conditions to a break right are construed strictly, failure to comply with the conditions can lead to the frustration of the right and therefore the continuance of the lease term.

Assigning

Whilst assignment in the current climate may be more challenging, if the lease provisions permit assignment and you can find a suitable assignee, assignment allows a tenant to vacate the premises before the lease end date.

But beware, most leases require you as the outgoing tenant to guarantee the new tenant's lease obligations by way of an authorised guarantee agreement. Assignment of the lease does not necessarily provide a full release from all future liability unless provision of an authorised guarantee agreement is not a condition or can be negotiated out.

Top tips

- Most leases permit assignment subject to landlord's consent so do not forget to obtain consent prior to assignment. Check the terms of the lease for any other conditions to assignment and ensure compliance;
- For more information on what you need to know and how to avoid some of the common causes of delay please see our guidance note "Reducing office space post Covid-19".

Subletting

Many leases permit subletting of the whole premises and some permit subletting of part. Sublettings of whole are perhaps the most unsatisfactory mechanism for an early lease exit as the tenant remains on the hook for the lease covenants. Reliance is placed on the subtenant comply with its obligations in the sublease and not putting the tenant in breach of its lease. Subletting part gives flexibility by allowing a tenant to continue to use some of the space with the potential to grow back into the full premises in the future when the sublease term comes to an end (or is terminated earlier if negotiated into the Underlease).

Top tips

- Ensure the premises can be split into spaces capable of separate occupation;
- Know your subtenant – carry out sufficient due diligence to ensure the subtenant can pay the sublease rent and comply with the financial obligations in the sublease.

For further information, please contact our [real estate team](#).



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