RICS

Small Business Property Guide

BRITISH RETAIL CONSORTIUM
for successful and responsible retailing

ATCM
association of town & city management

FSB
Federation of Small Businesses
The UK's Leading Business Organisation

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The UK's Leading Business Organisation

"The Federation of Small Businesses (FSB) recommends the RICS Small Business Property Guide as an invaluable resource to all business owners and would strongly encourage small and medium-sized businesses to use it to manage their property assets more profitably."

John Allan, National Chairman, Federation of Small Businesses

ATCM
association of town & city management

"Property can be a daunting prospect for any small business owner due to numerous legal concerns and costs involved. Therefore, ATCM welcomes the RICS Small Business Property Guide and encourages its members to make it available to local businesses to help manage their property assets and drive a sustainable local economy."

Martin Blackwell, CEO, Association of Town and City Management

BRITISH **RETAIL** CONSORTIUM
for successful and responsible retailing

"The British Retail Consortium represents around 80% of all retail in the UK and our membership includes a range of businesses both large and small. We believe the RICS Small Business Guide brings together vital tools and information that will help to avoid unnecessary costs in starting your business, while providing the platform on which your business can grow."

Helen Dickinson, Director General, British Retail Consortium

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Acknowledgments

This guide was produced by the Royal Institution of Chartered Surveyors (RICS).
RICS would like to express its thanks to the following who contributed to its development:

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Introduction

How can this guide help me?

This property guide is designed to help small business owners to manage their property efficiently and run their business more profitably. Decisions about premises – buying, leasing, maintaining or extending can be daunting for business entrepreneurs whose main energies are focused on making a success of the business itself. Finding the right solutions to your property needs and dealing effectively with the many issues that can occur while you are in occupation is integral to running a successful business.

This guide provides information to support you with the more common decisions and actions that you may need to take, from acquiring a lease to challenging a dilapidations claim. Other vital property-related issues such as valuations, planning permission and the business rates system are also covered.

Many of the topics included here can be highly complex and a guide such as this can only provide an outline of the key points. It is not a substitute for the depth of knowledge and experience that a professional surveyor – working in some instances with your lawyer or accountant – can provide. It should help you to appreciate when you need to call in the professionals and it will give you the necessary background so that you know what to ask your professional adviser and understand more fully the information and advice that you are given.

This property guide is intended for small businesses across the United Kingdom. You should be aware that there are instances where different conditions may apply in Scotland and Northern Ireland. These are highlighted.

For further copies of this guide visit the RICS website at **rics.org/smepropertyhub**

How can a professional surveyor help?

Members of RICS – Royal Institution of Chartered Surveyors – are the professionals of the property world. Their training and experience qualifies them to help on all aspects of your property affairs. Some offer a range of property skills and others specialise in particular areas such as valuation, building surveys or agricultural property.

RICS members can be recognised by the letters AssocRICS, MRICS or FRICS after their name. Membership of RICS is more than a guarantee of levels of professional training and experience. RICS ensures that its members abide by strict rules of conduct including rules around handling clients money. As an ultimate safeguard, all RICS member firms are required to carry professional indemnity insurance which protects clients in the unlikely event of professional negligence.

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Finding the right premises

Your business will be easier to run – and more profitable – if you find the right premises, but unless you approach the search in a logical and organised way, and take advice where necessary, you risk overlooking some points which may turn out to be vital at a later stage.

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Where should I look for details of available premises?

RICS members who handle the sale and letting of commercial premises will be able to help you. You can get a list of RICS members in your local area from RICS.

Get a feel for the area with a little research, touring around to spot For Sale or To Let boards. Get hold of all local newspapers or specialist business newspapers that you can. Most local papers run a commercial premises column at least once a week.

What is the order of priorities in deciding on premises?

Think the process through logically. The best sequence may be:

- location. If you get this wrong there is no way of correcting your mistake except by moving again! If your business is in manufacturing, ease of access to sources of raw materials and to your markets may be essential. If you are running a shop, it should clearly be in a location where the public will notice it and find it easy to visit. For cost reasons you may have to accept some compromise

- you need to consider your **business strategy**, the number of people you will be employing, the processes used in the business and the machinery required. The type and location of property required for a manufacturing business with heavy plant will be different from that required for a software or distribution business. Consider also your ongoing plans. Should you ensure at the outset that there is space for expansion or will you rely on a move to larger premises at a later date as the business expands? Think about the quality of the workspace environment and how this may affect staff and their productivity. All of these considerations need to be thought through before you make a final choice about your premises

- next, prepare a **specification** of the premises you want. Sketch out a plan on graph paper, detailing your requirements. From this you can calculate the floor area you need. Do not forget car parking and loading and unloading facilities and remember your utilities requirements – what power supplies will your processes require, what telecommunications facilities, for example?

- the other key decision you have to make at the outset is whether you will be **purchasing or leasing** the premises

- calculating how much you can afford to pay in outgoings on the premises will determine, whether you buy or lease. In addition to rent or mortgage repayments you will need to allow for general rates, water rates, service charge for maintenance and cleaning of common areas, and insurance of the building.

Armed with this information, you will be able to give a chartered surveyor a succinct summary of what you are looking for. The chartered surveyor you retain to advise you will provide independent and professional advice on the size, type, form of tenure and location of premises that best suit your needs.

What are the pitfalls and safeguards when taking on premises?

Check the state of repair. Your chartered surveyor plays a key role here and will be able to advise you on the repair outlays that you are likely to face. If you are leasing the property, you need to be clear who is responsible for repairs: the landlord or you, the tenant.

Check that the property has planning permission for your use and that there are no restrictions on your ability to run your business, (e.g. a limitation on working hours or noise emissions). If you need to obtain planning permission for your use, remember to allow eight to 10 weeks (and, unfortunately, sometimes a lot longer) for the application to be processed. Altering services such as electricity and gas can be extremely expensive, so always ensure that the property has adequate mains services and that they are in good order. Ensure that the premises comply with health and safety requirements, including fire regulations and access requirements under disability legislation.

In checking the proposed lease with your chartered surveyor and solicitor, pay particular attention to the clauses relating to service charges, rent reviews, sub-letting and assignment, repairing and decorating obligations and personal guarantees. Also make sure you know whether you will have security of tenure.

You may wish to alter or adapt the building to suit your requirements. Almost certainly, you will have to obtain your landlord's approval for these works before carrying them out and you should, therefore, allow sufficient time.

If you are taking over a building which has been previously occupied, make sure you understand which fixtures and fittings will be removed when the previous occupier leaves.

If your business is a start-up operation, you might consider finding premises which you can occupy under a licence rather than a lease. Another option, mainly in the case of office space and mainly in major urban areas, is to look for serviced office space. Here you enter into a service contract rather than a lease, which may provide you with workstations, secretarial services and so on as well as the office space itself. Such contracts range from the very short term to long-term arrangements.

Is there any financial help for businesses setting up in new premises?

Grants and other incentives might be available from central government or your local authority. Contact your local council which will be able to advise you.

How long should I allow for finding premises?

Plan well in advance. It will vary with the circumstances but, as a rough guide, allow between three and six months. It is vital that you are in control of the timetable, so that you are not forced into hasty decisions.

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Buy or lease?

Deciding whether to buy or lease your premises is not always easy as sometimes you will not have the choice. It is an important decision, with strong arguments both ways, and it could vitally affect the future development of your business.

What is my starting point?

Start with your business itself. Is it a mature business already? Is it a young business which you expect to remain roughly at its present size? Do you expect, if all goes well, that it will expand significantly in the years ahead? Try to build a picture of where you expect the business to be in five years' time.

Leasing is generally more flexible than buying, at least in the case of a short lease. If your business is currently small but you expect it to grow, leasing might be the preferred option. You can take a lease or even a licence on premises that satisfy your present space requirements. If a short term lease is appropriate for your business RICS has a standard lease for small business in the retail sector available from **rics.org/smallbusinesslease**

As your space needs increase you can move on to a larger building without the hassle of having to sell your original premises. With industrial buildings in particular, design trends change quite a lot and if the building that you lease becomes obsolete you can move to one that meets current requirements. However, there is always the possibility of buying a building which can be extended or adapted if you find you need more space in the future.

Some types of business require a large amount of plant and equipment in the building, with high installation costs. As you will want to write off these costs over many years, you will not want to change premises at frequent intervals. In this case, buying may make more sense than leasing. If you do take a lease, it will need to be a long one.

Would I have more freedom of action as an owner?

Aside from the question of moving premises, you will generally have more freedom of action as an owner than a tenant. You would not need to obtain a landlord's approval (with the attendant time delays and costs) for changes that you want to make. It is more likely that you would be able to extend the building. You will not be faced with the administrative inconvenience of negotiating rent reviews, of renewing your lease or of arguing dilapidation claims if you move out.

On the other hand, many of the same restrictions will apply whether you buy or lease. You will still need to maintain and insure the building, whether it is for yourself or a landlord. You will still be subject to the same external constraints, like the need for planning permission when the occasion arises.

Which makes more financial sense: owning or leasing?

This is where the two-way arguments are at their strongest. Many larger businesses consider that their capital is better employed (and will earn higher returns) in the business itself than if it is tied up in the company's properties. They may tend to lease their buildings rather than own them and even dispose of existing buildings that they do own via a sale and leaseback (this is where the property is sold to an investor, but the occupier remains in occupation as a tenant, subject to a lease).

The decision depends partly on the way that you expect the property market to move. If you expect the level of rents to move up rapidly, as a tenant you could face big increases in your rent bill in the future when rent reviews occur, and if you do not own your property it is the owner, not you, who will benefit from any future increase in their capital value.

If you own your property, you will get the benefit of any capital appreciation and will own an asset at the end of the day. If the building increases substantially in value, you might be able to borrow against the increased value in the future, which could extend your financing options. You will not have to worry about big increases in your occupation costs following rent reviews. You should also discuss the issue with your accountant as there may be some tax implications flowing from the decision as to whether to lease or buy.

How would I finance a purchase?

A commercial mortgage is the most common form of finance for the purchase of a building, particularly of the type likely to be used by a smaller business. Such mortgages are obtainable from a variety of lenders, including the main high street banks and some building societies. You may compare the terms on offer yourself or enlist the help of a specialist mortgage broker. The terms and the cost will vary quite a lot, depending on the options that you choose.

In costing out commercial mortgages, remember the additional costs as well as the interest payments and capital repayments you will have to make. There will be valuation and legal costs at the outset and if you go via a broker there will be his or her fee to consider. The lender may charge an up-front fee for setting up the loan and there is the cost of any required insurance. There will also probably be penalties for early repayment: look carefully at these before you make the decision.

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Taking a lease

Signing a lease on premises means that you are probably entering into one of the most significant financial commitments that your business will make. So there is a lot of work that you and your professional advisers need to have done before you reach this point. This way you can make sure that the lease matches your requirements as closely as possible and that you understand all the lease's possible ramifications.

For properties in England and Wales there is a guide to help landlords and tenants to negotiate fairer leases entitled *The Code for Leasing Business Premises in England and Wales* – this is available to download from **leasingbusinesspremises.co.uk**

There is not currently a Scottish equivalent, but a lot of what is said in this code applies equally although specific legal advice should be taken.

RICS has also produced a standard business lease aimed at retail property and is available from **rics.org/smallbusinesslease**

Leases are complex documents with different arrangements in England and Wales, Scotland and Northern Ireland. Few people outside the property and legal worlds will necessarily understand all the detail and the implications. This is why it is essential to call on the professionals – your chartered surveyor and solicitor – at the earliest possible stage.

What is a lease?

A lease is a binding contract in law which sets out the terms and conditions of the tenancy agreement between landlord and tenant. It defines the rights and obligations of both parties. It is therefore enforceable – you cannot simply walk away from a lease. However, certain aspects of the relationship between landlords and tenants are also defined by law. A first draft of the lease will usually be drawn up by the landlord's solicitor as a basis for discussion between the parties.

New lease or existing lease?

The pattern of property tenure may be complex and is not always a simple matter of a tenant taking a lease direct from the property owner (the freeholder). Take the following situation:

- an investor owns the freehold of the building
- a tenant takes a lease from the freeholder
- a second tenant later takes an assignment of this lease from the original tenant, thus becoming the assignee and assuming the responsibilities of the original lease
- the assignee later grants a sub-lease over parts of the building that are surplus to requirements to a sub-tenant.

In practice the chain may be considerably more complex than this. Needless to say, nobody down the chain can grant a lease longer than his or her own lease.

If you, as a prospective tenant, are taking a lease on a building you might be negotiating a new lease with the freeholder. On the other hand you might be entering the chain lower down and taking an assignment of an existing lease, or perhaps a sub-lease. With the new lease you should be able to negotiate the terms to match your requirements (though you will not necessarily get everything you want!). With an existing lease you will be bound by the conditions that it already contains and you have to decide before signing whether you can live with these or not.

These complexities emphasise the need for professional advice, as no two situations are identical. What follows is geared to a tenant negotiating a new lease, but most of the same considerations apply when assessing the suitability of an existing lease that you are thinking of acquiring.

Is there such a thing as a standard lease?

Subject to overriding legal requirements, it is up to the landlord and tenant to agree the terms. However, there are certain matters that will crop up in almost all leases and you should refer to the industry lease code for more information on these.

In addition RICS has produced a model lease and heads of terms for a retail property. This is available from **rics.org/smallbusinesslease**

The landlord and his or her advisers will probably have a pretty clear idea of the form of lease they would like and the main conditions. You, as prospective tenant, may want to negotiate for changes on specific points. Your bargaining position with the landlord will depend on a number of factors, including the state of the property market at the time. This is where your chartered surveyor's expertise will be invaluable.

When negotiating a new lease both parties should refer to the principles contained in the industry *Code for Leasing Business Premises* available from **leasingbusinesspremises.co.uk**

How long should a lease run?

Again, this is up to the parties concerned to negotiate. In the case of longer leases there will often be provisions for the rent to be adjusted at intervals of, say, three to five years. The wording of this rent review clause in the lease is very important.

The lease length is the period during which you may occupy the property, and are liable for rent. It is important to realise you will be liable to the landlord throughout the length of the lease for rent, and to pay outgoings such as rates. This liability will only end if you pass the lease onto someone else, with the landlord's agreement. Even then, if the person to whom the lease is passed on does not pay, it is possible you will remain liable.

Is it vital that you understand this point.

What is security of tenure?

You should understand that, in England and Wales at the end of the lease, unless the lease contains a written agreement to the contrary, a tenant of business property is protected by the Landlord and Tenant Act 1954. The tenant is entitled to a new lease, on terms which the parties agree or which a court will decide if they can't. There are occasions when this will not apply, and it is important to take legal advice.

In Scotland these provisions do not apply. Provided either party gives at least 40 days notice of termination of the lease prior to the expiry date the lease will terminate and you will have no right to remain in the property. There is a limited exception under the Tenancy of Shops (Scotland) Act and you should consult with a Scottish solicitor on this.

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The Landlord & Tenant Act 1954 is largely replicated in Northern Ireland via the Business Tenancies (Northern Ireland) Order 1996, however, significant differences pertain and again you should take specific legal advice.

Do I always have security of tenure?

No. Some leases will specifically state that the tenant does not have the protection of the Landlord and Tenant Act 1954, which normally provides for security of tenure.

As a general rule, you should be very wary of giving up the security of tenure that the law normally provides. However, there will be some cases where a landlord will not be prepared to sign a lease except with this exclusion.

Even if your tenancy is protected under the Act, you are not certain of obtaining a new lease when the current one expires. The landlord might legitimately oppose your application on certain limited specific grounds: that he or she needs to occupy the building or wishes to redevelop it, for example. Or the landlord might claim that you had consistently breached the terms of the old lease.

What are the redecoration and repair obligations?

The clauses in the lease relating to redecorations and repairs are very important, particularly when you are leasing an older building. Usually you, as the tenant, will be responsible for internal decoration and repairs and you may be responsible for external ones as well. The requirement to repair a property probably includes an obligation to undertake any repairs necessary at the time you sign the lease. So be very wary if you are planning to lease a building that is already in disrepair. An obligation to keep a property in repair requires the tenant to put it in repair. This is where it is vital to have the premises surveyed by your chartered surveyor at the outset. He or she will be able to advise on the scale of liability that might be involved. Note also that towards the end of the lease the landlord may serve notice on you – known as a 'schedule of dilapidations' – to carry out specified repairs. Since there is frequently argument over this point, it is again important to have a record of the state of the premises at the outset and professional advice is essential.

May I carry out alterations to the building?

The lease will probably prohibit you from carrying out structural alterations or building extensions but may allow you to make internal alterations – such as partitioning – with the landlord's consent. You may, however, be required to remove any changes you have made internally and return the premises to their original state (**reinstate** them) at the end of the lease.

Who insures the premises?

Broadly, there are two different considerations involved: who arranges the insurance and who pays the premiums. Normally, the tenant will pay the premiums in one form or another, even if the insurance is arranged by the landlord. Most tenants will also want to insure against disruption and loss of profits should the building become unusable following a fire or other accident.

Am I restricted in my use of the building?

You will inevitably be subject to some restrictions under planning legislation. You will not be able to use a high street shop as an engineering works! The lease may also impose further restrictions on use – to maintain a balance of tenants in a shopping centre, for example. A lease with strict conditions of use may be difficult to assign.

How is the rent established at the outset?

It is up to landlord and tenant and their advisers to agree the starting rent before the lease is signed. However, this rent may subsequently be reviewed at intervals. The expertise and market knowledge of your chartered surveyor is vital in agreeing a rent because they will know the level of rents that have been achieved for similar recent lettings in the area and can advise you on what figure is reasonable. Sometimes it may be possible to negotiate some form of rent-free period at the beginning of a lease.

However, the rent cannot be viewed in isolation without considering the other terms of lease. You should, for example, expect to pay more if the landlord takes responsibility for repairs than you would do if you were responsible for them.

The lease will state the payment terms for the rent. This is often quarterly in advance although other alternatives such as monthly payments could be considered. There will be penalties for late payment and the lease probably allows the landlord to repossess the premises if you default completely on the rent.

Will the landlord require a guarantee for the rent?

Particularly if your business is a very young or small one, the landlord may insist on some kind of guarantee for the rent and the other obligations of the lease. If you are asked to provide a personal guarantee, be aware of the implications. If your company goes bust, the landlord could have a claim on your home and other personal assets. You also need to be clear whether any guarantees would cease to apply if the lease was subsequently assigned. Ensure, if you can, that any guarantee lapses on assignment.

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What happens at the rent review point?

Rent reviews are a topic on their own and you should read **section 10 Rent reviews**. It is when you sign a new lease or take an assignment of an existing lease that you agree to a certain pattern of rent reviews in the future, so you need to understand the implications at this stage.

Traditionally, longer leases will provide for the rent to be reviewed every three, four or five years during the life ('term') of the lease, possibly in an 'upward only' direction. *The Code for Leasing Business Premises in England and Wales* has been drawn up to guide landlords and tenants and pays particular attention to the subject of rent reviews. Landlords have been recommended to offer tenants alternatives to upward only reviews. Your chartered surveyor will be able to advise you on the implications of the landlord's proposed rent review clause and whether there may be scope for negotiation.

How are disputes between landlord and tenant resolved?

Ideally, by discussion and negotiation but serious differences of view cannot always be avoided, particularly on matters like market rent levels at the review point. Therefore a lease will normally provide in advance for what is to happen when disagreements occur on certain key points.

In the absence of other provisions, the ultimate recourse for either party is to the courts. This would involve considerable time and expense, so the lease may state that disputes which cannot be resolved amicably between the parties should be referred to an arbitrator or to an independent expert.

RICS offers a small business scheme which helps small businesses with rent reviews. **The Small Business Scheme** offers a way to have an independent expert settle disputed rent reviews on commercial properties.

What are service charges?

In addition to rent, there are certain other regular payments that you as tenant may need to make to the landlord. Particularly where you occupy only part of a larger building, the landlord may charge you a portion of the cost for services that he or she supplies for the building as a whole: maintenance of common parts, decoration and maintenance of the exterior of the building and the like. This will generally be described as a 'service charge'.

It is important to ensure before signing the lease that you understand the basis on which service charges will be calculated and the sums likely to be involved. **See section 09 Service charges** for more detail.

Who is responsible for paying business rates?

Businesses are liable to pay the 'uniform business rate' (UBR), and it is usually the tenant who will be responsible. Occasionally, however, the landlord will pay the UBR and pass on the cost to the tenant, perhaps in the service charge. The lease should make clear where the responsibility lies.

Can I escape from a lease if my property requirements change?

There are two main possibilities if you want to vacate the premises before your lease expires. You may 'assign' the lease to another tenant who takes over responsibility for paying rent to the landlord (but see below). Or you may continue to pay the rent, but sub-let the space to another tenant, from whom you in turn collect rent. However, your lease will probably limit or impose conditions on your ability to follow either course, and you need to understand these limitations fully before you sign the lease.

Some leases will incorporate a 'break clause', which gives the landlord or tenant (or both) the right to walk away from the lease at a specific point.

The clauses in your lease relating to assignment and sub-letting can have a very important effect on your future flexibility. You should make certain that your chartered surveyor or solicitor explains exactly what you are being asked to agree to, and its possible implications.

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Taking a licence

If your business is very young or a complete start-up, there might be advantages in occupying your premises under a licence rather than a lease. Property owners sometimes find it convenient to grant a licence, partly because the occupier will not qualify for 'security of tenure'. Licences are usually for much shorter periods than a lease and do not require the same level of financial commitment.

Licences need to be drawn up very carefully. Otherwise they might be interpreted in law as a lease. It is vital to take advice from a solicitor and a chartered surveyor before signing a licence, either as occupier or licensor.

What is a licence?

In this context a licence is technically a 'licence to occupy'. The 'licensee' – the business that occupies space under a licence – does not have a tenancy and cannot therefore be described as a tenant. Nor does the occupier pay rent. Technically, the payment it makes for the use of the space is a 'licence fee'. A licence needs to be drafted carefully so that it does not fall within the definition of a lease and therefore come under the Landlord and Tenant Act 1954. Typically a licence is likely to be for a period of less than six months and the space may be shared.

What are typical terms for a licence?

The terms vary greatly with the circumstances. The licence fee (the equivalent of rent) might be payable monthly in advance or even weekly. The 'licensor' (the equivalent of the landlord) might be able to require the occupier to leave after one month's notice and the occupier might also be able to give one month's notice of intention to quit. Various services may be provided as part of the licence arrangement.

What are the advantages of a licence?

A young business without much financial backing may find it easier to obtain a licence than a lease. Typically, you might be required to pay at the outset a deposit equivalent to one month's licence fee plus one month's licence fee in advance. If you take a licence you will also find it much simpler and cheaper to extricate yourself if your business plans do not work out and you need to make savings.

What are the drawbacks of licences?

As occupier you have no security of tenure and might lose your premises at quite short notice. It can therefore be risky to invest in decorating or furnishing the premises to your requirements. You are at the mercy of the licensor should he or she later decide that you may continue to use the space only if you are prepared to sign a full lease. You may also find that the licensor has access to the premises you occupy at any time.

A licence appears simpler than a lease and may be a temptation to ignore the usual precautions. Do not grant or accept a licence without consulting your solicitor and chartered surveyor.

What sort of properties are available under licence?

It varies a great deal. Old multi-storey warehouse buildings are sometimes refurbished as small office units or even as individual rooms which might be available for occupation under a licence. Older industrial buildings – 'sheds' – are sometimes occupied under licence by a number of manufacturing businesses. Seasonal shops are often available under licence.

Businesses that own or lease the premises they occupy and find themselves with surplus space might make sections of the building or individual rooms available under licence.

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Building surveys

You would be advised not to buy a building without first commissioning a building survey from a chartered surveyor. It may be just as vital if you are taking a lease. You need to know what repairs you might face and you may need the evidence of the survey later if your landlord tries to make you pay for work that you do not think is justified. You need to be sure that the condition of the building when you move in is properly recorded.

05

When do I first need a building survey?

Before you buy a property or take on a lease you need to know of any problems prior to committing yourself. Whether you are buying or leasing you need to know the condition of the building and the likely repair or maintenance costs.

A lease will normally require you to maintain the property in good repair and probably to put it in good repair if it is in a bad state at the outset. Just occasionally the lease may state that you do not have to return the property to the landlord at the end of the lease in better condition than it was at the beginning. In all cases you need clear evidence of the condition of the building when you take it on. A survey will provide this. A **schedule of condition** attached to the lease at the outset is your safeguard for later.

What does a building survey cover?

You need to tell your chartered surveyor the purpose of the survey and its scope. A chartered surveyor would not report in detail on the heating or electrical equipment in the premises or the underground drains, for example. If you want these items covered you must tell your chartered surveyor, who can arrange to bring in the appropriate experts.

Other items normally excluded, but where sampling and testing may be included if required, would be the presence of damaging (technically, **deleterious**) materials – such as high-alumina cement. Specialist surveys are available to cover asbestos and the terms of the Disability Discrimination Act.

You should negotiate the fee for the survey in advance with your chartered surveyor.

How does the chartered surveyor go about the survey?

The chartered surveyor starts with a visual inspection of the building. The usual pattern is to take it top to bottom externally, then top to bottom internally. The chartered surveyor will inspect floors, walls and ceilings and will be paying particular attention to signs of settlement, damp or timber decay etc. The state of roof coverings, gutters and downpipes will be noted, as will the condition of doors or windows which may be approaching the end of their useful life. Your chartered surveyor is noting not only the present condition of the building and its individual elements but also the items that will need attention in the foreseeable future. The immediate repairs that will be needed plus the likely timescale of future maintenance and repair work, with an indication of the probable cost, will be noted in the building survey.

What if I lease only part of a larger building?

The survey will need to cover the part you are planning to lease but will also need to take account of the condition of the building as a whole. The cost of repairs to common parts may be apportioned among the tenants.

What will the survey report tell me?

Your chartered surveyor's report will be presented in 'elemental' format. In other words, it will describe each element of the property – roofs, walls, floors, etc – in turn. It will also note the items that have not been covered, such as deleterious materials (unless you have requested this). He or she will, however, note anything emerging from the inspection that give cause for concern and suggest that further investigation is needed. Your chartered surveyor will also note anything that could not be inspected during the survey.

May I use the survey report for whatever purposes I like?

No. The report will probably note that it is confidential to you, as the client, and to your professional advisers. It will exclude any liability to third parties who make use of the report without the chartered surveyor's express permission.

The position is rather different in the case of a 'vendor survey': a survey for an owner who is planning to sell the building. In this case you will be allowed to show the report to prospective purchasers within a specified time frame. The time limit is there to prevent other people from being misled as to the state of the property by an out-of-date report.

How can a chartered surveyor help with planning maintenance?

Your lease will probably require you to keep the premises in good condition and may impose a timetable for internal and external decoration. After the inspection your chartered surveyor will be able to help you prepare a maintenance schedule both of day-to-day items and of other items that will need attention at longer intervals. This will probably be supplemented by an interim inspection by your chartered surveyor every couple of years. Sticking to this schedule may save you greater expense later and enable you to budget more efficiently over the period of your lease.

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Valuations

There are many different reasons why you might need a valuation of a business property. You might need to establish the security for a loan. If you are thinking of buying, selling or renting a property, you might want an indication of the likely price. A valuation may be needed for incorporation in your accounts or in a propectus and you may need a figure for insurance purposes.

Given the wide range of purposes that a valuation may be used for, it is a complex professional exercise and there is no such thing as a single valuation for a property, applicable for all purposes. Valuations are produced on different assumptions – and may come up with different answers – depending on their purpose.

For this reason a competent and impartial valuation is essential and RICS has a register of qualified, regulated valuers to assure the quality of valuations.

Why valuations are important

Valuations underpin nearly all financial decisions from home mortgages to major investment and corporate finance transactions.

Robust practice standards form the basis of high quality valuations. RICS is the world's leading organisation for valuation professionals and is respected by employers and clients the world over.

As a client of an RICS registered valuer, you should expect to receive the highest level of service from them.

What should I expect from an RICS valuation?

As a client you should expect the following level of service from your RICS registered valuer:

- **openness and transparency** – all RICS registered valuers are required to make full disclosure and avoid conflicts of interest
- **clear reporting** – RICS valuers are experts in their fields and provide clear reports based on diligent investigations, market commentary and analysis
- **International Valuation Standards** – all RICS valuers are regulated to International Valuation Standards
- **world class regulation** – firms that carry the strapline 'Regulated by RICS' are required to have appropriate levels of professional indemnity insurance and a complaints handling procedure.

What information will the valuer need?

Valuation is a professional opinion based on a range of physical, legal and financial information about the property and the market in which it sits. A basic rule of thumb is that the more information the valuer has the more accurate the valuation is likely to be. Many of these are obvious such as the basic measurements and locational details of the property. However the valuation also depends on information such as: a clear understanding of what is being valued (are plant and fixtures to be included?). Clarity on the purpose of the valuation: what leases – if any – are involved? Your chartered surveyor will set out the requirements.

What is not covered by a valuation?

A valuation is not a building survey. The valuer will take account of what he sees of the general condition of the building, but will not undertake a detailed investigation for defects.

May I use the results of a valuation as I like?

No. A valuation is produced for a specific client, a specific purpose and is based on specific assumptions. To use it in a different context could be misleading. You will need to agree with your valuer at the outset how the report is to be used.

How do I agree the valuation fee?

Fees will depend on the nature and scale of the work, so discuss this at the outset with your chartered surveyor, who is required to give you a written note of his or her fees in advance of the valuation. As qualified and experienced property professionals, chartered surveyors are bound by RICS global ethical standards. They are also required to carry professional indemnity insurance for your protection in the very unlikely event of negligence. Do remember that there is an inevitable element of opinion in any property valuation.

How do I contact an RICS registered valuer?

You can find your local RICS registered valuer by visiting **ricsfirms.com**

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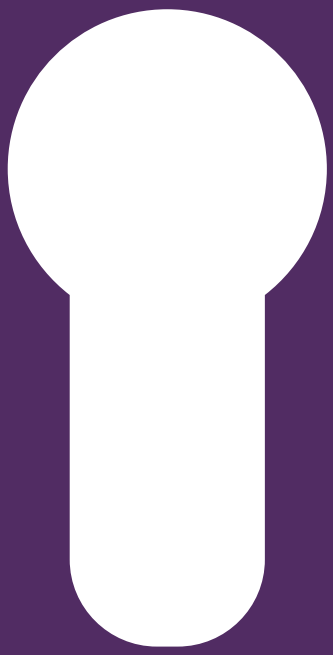

07

Property insurance

You need adequate insurance for your premises to protect your business. If you are a tenant, it is probably required by your lease. It is important to remember that buildings insurance does not usually cover disruption to your business, contents or stock which will probably need to be insured separately. A chartered surveyor can calculate the reinstatement cost for insurance purposes, advise you on precautions that will satisfy your insurer and negotiate on your behalf if you are unlucky enough to suffer a loss.

How do I arrange insurance?

If you are a tenant, the first step is to establish from the lease who is responsible for insuring the premises. It may be that you are required both to arrange and pay for the building insurance. On the other hand your landlord might arrange insurance but pass the cost on to you. If you occupy only part of a building, the landlord will probably arrange insurance for the building as a whole and charge you your proportion of the cost.

How do I know how much I should insure for?

Your chartered surveyor can undertake a reinstatement cost assessment. This tells you what it would cost to rebuild the premises if they were to become a total loss, including the cost of demolition and clearing the site plus professional and local authority fees.

However, you must make allowance for inflation in construction costs. In an industrial building, any process plant would normally be insured under a policy separate from that covering the building structure.

Make sure that your insurance provides cover for disturbance and relocation costs should your premises become unusable following serious damage. You should also ensure that you have insurance cover for continuing to pay rent in the event that the building is damaged and you are unable to run your business from it.

How do I arrange the insurance?

You would normally go through your own insurance broker and obtain at least three quotes. Once you have made a provisional choice, insist on obtaining a copy of the policy document and get your broker to advise you on the policy details.

Your insurers may want to see the reinstatement cost assessment that your chartered surveyor has produced, and might also want to carry out their own inspection of the premises. Your landlord may also want to see evidence that you have obtained adequate insurance.

How do I keep my insurance up-to-date?

Your insurance policy will probably have an ‘indexation clause’ that will automatically increase the sum insured in line with construction costs each year. However, the figures should be reviewed whenever you undertake alterations. In any case you should ask your chartered surveyor to review the reinstatement cost every three to five years.

What happens if I suffer a serious loss?

If your premises are seriously damaged – by fire, for example – the immediate task will be to carry out emergency work to protect the building and its contents.

You should contact your chartered surveyor immediately and he or she will be able to negotiate with your insurers or their loss adjusters over the emergency measures and administer the work. Later, your chartered surveyor will be able to negotiate the full claim on your behalf.

Your lease may provide that rent ceases to be payable if the premises are no longer usable. Finding alternative accommodation will be your own responsibility. If you were responsible for insuring the property, it will normally be up to you to arrange to have it repaired or rebuilt. Again, your chartered surveyor can help with the planning and may act as contract administrator for the construction work.

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Business rates

You are almost certainly liable to pay business rates if you occupy business premises. Business rates are a tax based on the rateable value of the property, which reflects its rental value. The rateable value can, however, be challenged. It may change in any case if the premises are altered or if their value is affected by changes in the locality. Some limited classes of property are exempt from business rates altogether.

Rating is complex and expertise is needed to chart a way through. Chartered Surveyors know the system and their knowledge may be able to save you money.

A detailed guide to business rates in England and Wales is available at **gov.uk/introduction-to-business-rates**

Different systems apply in Scotland and Northern Ireland and more information can be found at these websites.

scotland.gov.uk/Topics/Government/local-government/17999/11199/brief-guide

nibusinessinfo.co.uk/content/help-available-business-rates

RICS runs a rating helpline, offering half an hour of free advice from a local chartered surveyor specialising in business rates. You can access this service by calling the RICS Contact Centre (02476 868 555).

What follows is based on the rating system in England and Wales.

Who assesses the rateable value (RV) of business properties?

The Valuation Office Agency of HM Revenue and Customs assesses the rateable value of all relevant properties in England and Wales.

The Valuation Office Agency publishes a new rating list for each billing authority, which shows the rateable values of all properties in its area. The rating list can be seen at the office of your local Valuation Office Agency (and viewed online at **voa.gov.uk**) and a copy is also available at the offices of the billing authority.

What properties are subject to business rates?

Most business premises are assessed for rates and have a rateable value. Living accommodation is generally treated as domestic property and is subject to the council tax instead. Where business premises and living accommodation are within the same 'curtilage' and occupied by the same person the property is known as a 'composite'. Generally, business rates are payable on the business accommodation and the council tax is payable on the living accommodation.

Apart from living accommodation, there are several types of property that are exempt from business rates, including agricultural land and buildings, nursing homes, fish farms and most churches.

How are business rates calculated?

There are two main factors: the rateable value of the property and the level of the uniform business rate (UBR), which is expressed as a fraction of a pound. Multiply the one by the other and in theory you would have the annual amount of business rates. However, there is a complication because increases (or decreases) in business rates may be phased in over a period and the actual amount payable could therefore be below or above the figure this sum produces.

There may also be business rates supplements in addition to the basis UBR, such as the Crossrail business rates supplement paid by larger properties in London to fund the construction of Crossrail.

Business Improvement District (BID) levies are paid based on rateable value but are separate to the normal business rates liability.

The rateable value of a property is broadly its open market rental value – the rent it would fetch in the market – assuming the tenant insures the premises and carries out all the repairs. This basis of valuation is the same for all properties, whether they are owner-occupied, leased or occupied under a licence.

There needs to be a fixed date at which the open market rental value is assessed, which is usually two years before each rating list comes into force. A revaluation took effect from 1 April 2010. It follows, therefore, that rental values were taken at market conditions prevailing at 1 April 2008.

Although the rating valuation is based on the rental value as at 1 April 2008, the physical state of the property and its locality is assessed as at 1 April 2010 (or, if the property was altered subsequently, at the date of the alterations).

What is the uniform business rate (UBR)?

The UBR is the multiplier that is applied to the rateable value to calculate the rates due. Each year, the UBR increases in line with inflation. For the rating year 2013/2014, which runs from 1 April to 31 March, the UBR was set at a level of £0.462 in England and Scotland (£0.464 in Wales). Thus, if you occupied premises in England with a rateable value (RV) of £15 000, you would have calculated your theoretical business rates liability as follows:

£15,000 x £0.462 rates payable of £6,930

This is not necessarily the end of the story. For larger properties (with RV above £18 000 or £25 000 in London) a supplement to the UBR is likely to be payable to fund the costs of Small Business Rate Relief (see overleaf). Other special rates levies or supplements may also be payable in particular locations (such as London) or on special classes of property in Scotland. As well as these supplements the amount actually payable may also be affected by a phasing scheme known as 'transitional arrangements' (further details of this are overleaf).

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What is a Business Improvement District (BID)?

A Business Improvement District (BID) is a business-led initiative where businesses and organisations are invited to come together, in partnership with local authorities and public service providers, to make decisions and to take action to improve the trading environment within a defined geographic area.

What are the benefits?

The BID itself provides a means by which businesses and organisations have the power to raise their own funds to address the priorities that matter to them, and to bring about positive improvements to the trading environment that benefits the whole community.

Whether its focus is attracting more visitors and encouraging customers to stay longer, or raising the standards of local services and facilities, action to deliver an agreed set of projects and services has the potential to transform an area through collective action.

How is it paid for?

Much of the income needed to deliver projects and services through a BID comes from a BID levy – an additional charge alongside the Business Rates. This is collected on behalf of businesses by the Rates and is held in a ring-fenced account and used only for costs directly associated with the delivery of the BID, in other words the projects agreed and voted for by the participating businesses.

Is it just another tax?

The levy is NOT a tax and does not go to either the Government or the local authorities. Business Rates, together with the Council Tax, pays for statutory and non-statutory services such as cleansing, lighting, policing etc. The BID levy is a separate, specific fund to invest in projects and services identified and controlled by the businesses themselves.

Who will pay and how much will it cost?

Any person, registered company or charity/non profit-making organisation are liable for the BID levy if they are the occupier/leaseholder of a property within the BID area.

The BID Levy is typically set at 1 or 2% of Rateable Value to keep it proportionate and affordable for ratepayers, occasionally with lower and upper end caps where these are considered necessary.

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Small Business Rate Relief

Rates relief is available for businesses occupying 'small' properties. Small properties in England are those defined as having an RV of **under** £18 000 (**under** £25 500 in London). The Small Business Rate Relief Scheme from 2010 offers relief at 50% (100% from 1 October 2010 now extended to 31 March 2014) for businesses with an RV of under £6 000, declining on a sliding scale to 0% relief at RV £12 000. Businesses occupying more than one property are eligible for relief only if their 'main' property has an RV under £12 000 and all their other properties are under RV £2 600 **and** the aggregate of all hereditaments occupied is under £18 000 (under £25 500 in London) – but note the relief will apply to the main property only. The Scheme is funded by the Small Business Relief Supplement.

There are special rate reliefs available for small businesses in rural areas.

There are different Small Business Rate Relief schemes in Wales and Scotland. Your local authority will be able to provide details of the Small Business Rate Relief that may be available to you.

Small Business Rate Relief in Scotland

From 1 April 2009, small businesses were offered varying rates of relief under the Scottish Government's small business bonus scheme. How much businesses are entitled to depends on the rateable value of the premises, although a business only qualifies if it pays non-domestic rates for properties with a combined rateable value of £25 000 or less.

Thresholds and percentage of relief offered from April 2013 (for tax year 2013 – 2014) are shown in the table below:

Combined rateable value (RV) of all business properties in Scotland	Rates Payable
Up to £10 000	100% (i.e. no rates payable)
£10 001 to £12 000	50%
£12 001 to £18 000	25%
£18 001 to £25 000	25% on each individual property with a rateable value not exceeding £18 000*

*This will allow a business with two or more properties with a cumulative rateable value of under £25 000 to qualify for relief at 25% on individual properties with a RV up to £18 000.

Further information, including advice about eligibility to apply, can be obtained from your local authority.

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How does transitional relief work?

Broadly, transition adjustments were introduced to spread the impact of some of the largest changes in business rates arising from revaluation. The idea was to limit the amount by which rates payable could rise, in real terms, in any single year. The limits are different for large and for small properties and for different years – your chartered surveyor will be able to help with the detail. As an example, if you occupied a large property in England, the business rates you paid in 2010/2011 would not have risen above the old 2009/2010 level by more than 12.5%, plus the rate of inflation.

There is another side to this coin. If the rating revaluation results in a reduction in your business rates liability, there are also limits on the reduction in any one year in the amount that you pay. The transitional arrangements, whether upwards or downwards, do not apply to new properties or to extensions and alterations which increase the value of a property and which were completed after 1 April 2010.

There are no schemes of transitional adjustments in either Wales or Scotland.

When do I have to pay the business rates?

You will receive a rate demand from the appropriate billing authority around 1 April each year. Normally you will be able to pay in ten equal monthly instalments.

Business rates are payable by the occupier of the property. If you are a tenant, the lease will sometimes state that your rent is inclusive of rates. In this case the landlord takes responsibility for the payments. Where the property is empty, it is the person entitled to possession of the property who is liable.

Are business rates payable if the property is empty?

There is no liability for rates for the first three months (or six months for warehouse and industrial premises) that a property is vacant. After that, empty rates are payable at 100% of the occupied rate. Check with your surveyor on the definition of 'empty'.

Empty rates are not payable on land, listed buildings, premises with a rateable value below £2 600 and certain other special classes of property.

What if the premises are partly occupied?

The billing authority has discretionary powers to grant relief where a property is temporarily only partly occupied.

Are there other reliefs from business rates?

Charities receive 80% mandatory relief. Non-profit making organisations may apply to the billing authority for discretionary relief (up to 100%). A special range of reliefs is available for small businesses and certain properties in rural areas (see the details above).

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Other reliefs in Scotland

New Start Scheme

From 1 April 2013, the Scottish Government introduced a new business rates relief of up to 100% for new empty business properties in a bid to boost speculative development and investment.

From this date, any newly built business premise that remains empty after completion the developer, or owner, will not pay any rates until it is occupied for a period of 18 months.

This policy will end in 2016.

Fresh Start Initiative

From 1 April 2013, the Scottish Government introduced a new relief whereby occupiers can apply for a 50% rates discount for the first year of occupation of some previously long-term empty shops or offices.

This offer was made regardless of intention or future use.

Interested parties should contact their council for further information.

Do I have a right of appeal against the rateable value?

Occupiers (or other qualifying persons) may lodge an appeal against their rateable value. If you are wise you will have consulted your chartered surveyor about your business rates liability at an early stage. You are then well prepared to decide whether it is worth mounting a challenge. Fixed time limits apply to certain types of appeal and you need professional advice here.

You may appeal against your rateable value yourself or you can instruct your chartered surveyor to undertake the appeal procedure on your behalf. Appeals may be served on a specific form (available from the local Valuation Office Agency) or by letter. They may also be served via the internet at **voa.gov.uk**

Unless your proposal is judged invalid (in which case you will be told), the Valuation Officer will acknowledge your proposal and you will be advised in writing of the likely timescale within which your appeal will come up for discussion. It usually takes some months, before the appeal is discussed. If you are suffering hardship as a result of delay, you should tell the Valuation Officer as it may be possible for the appeal to be 'fast tracked'.

Most appeals are settled by agreement, but if this is not possible they are referred to the Valuation Tribunal (or Valuation Appeal Committee in Scotland). If this happens you will receive notification of the date and time of the hearing. The tribunal will accept written representations, but it is usually better for you or your representative to appear in person. Costs are not involved, other than fees to your professional adviser if you employ one.

If you are pursuing your appeal to the Valuation Tribunal the processes that you must follow are set out in the practice statements published by the Valuation Tribunal for England. These are available from the Tribunal's website: **valuationtribunal.gov.uk**

Different processes apply in Wales and Scotland and you should speak to the tribunal clerk in Wales or the Secretary to the Appeal Committee in Scotland to find out about these.

If either party is dissatisfied with the tribunal's decision there is a further right of appeal to the Upper Tribunal (Lands Chamber). Costs begin to be incurred at this stage. Further appeals to the Court of Appeal may be made on a point of law only.

What if the rateable value is reduced?

If the rateable value is reduced, the rate payer should qualify for a rate refund (unless the effect of transitional relief is that liability has not changed, notwithstanding the reduction in rateable value). You may receive interest on the amount overpaid, provided that rate payments have been made on time and are up-to-date.

Are there any other pitfalls in the business rates system?

A lot. Unfortunately, rating legislation is very complex. The safe advice is to consult the professional – your chartered surveyor – at the earliest possible stage in the process. Beware of unqualified 'advisers' or 'consultants' who claim they can achieve a reduction in your business rates. The less scrupulous may take your money without delivering anything.

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Service charges

You will probably have to pay – over and above the rent – a service charge to cover the cost of services that the landlord provides. Particularly if you occupy only part of a larger building. Service charges for business premises are not specifically regulated by legislation. It is up to you, with your chartered surveyor's help, to make sure before you take a lease that you are happy with the amount of information you will receive on expenditure, which will be passed on to you via the service charge.

RICS has produced a Code of Practice for its members which is widely accepted by the property industry as the best practice principles for the management and administration of service charges in commercial property. The Code can be viewed at **rics.org/servicechargecode**

What does a service charge cover?

It probably includes your share of the cost of maintaining common parts of the building and a proportionate share of the costs of repair or redecoration of the building. It would also cover your proportion of the cost of insuring the premises where the landlord is responsible for insurance. If major items of equipment need replacement, such as a central heating boiler that serves the whole of the building, your proportion of the cost would probably be charged by way of the service charge.

Your lease should set out what items would come within the service charge. It is important to get your chartered surveyor to explain to you the implications of this part of the lease and what expenditure you might face.

How is a service charge levied?

This will depend on the wording of the lease.

Where there are several businesses occupying one property the costs for services need to be shared. It is likely that each separate occupier will have different needs so it is common for each occupier to pay a proportion of the total service charge for the property.

The proportion could be calculated using a number of methods but the aim should always be to ensure that occupiers bear a proportion of the total costs that is fair, reasonable and reflects the availability, benefit and use of the services. The method and details of the formula used to calculate your share should be clearly communicated to you by the property managers and it is essential that this matrix is reasonable and can be seen to be fair to all occupiers of the property.

The various items that are covered by the service charge will be listed in an 'expenditure schedule'.

You should be given a copy of both the 'apportionment matrix' and the 'expenditure schedule' together with a clear and easy-to-follow commentary on how the expenditure is allocated between the schedules and how those schedules are apportioned between the occupiers.

Any services that are used by some occupiers but not others should be excluded from the main schedule and only allocated to a separate schedule which is apportioned among the relevant occupiers.

Property owners and managers should try to keep the number of these schedules to a minimum so that overall management of the services does not become too complex.

The apportionment system means that owners will usually be able to recover all the expenditure on operational services through the service charge. However, sometimes this may not be possible.

The owner is responsible for the service charges attributed to unlet properties and for any specific concessions granted to individual occupiers. These charges should not be passed to existing occupiers.

The owner will need to bear a fair proportion of the costs attributed to their own use of the property (e.g. where an on-site management office is used as the owner's regional office) and also for any concessions granted to individual occupiers.

The apportionment matrix should be reviewed regularly to ensure that it is still fair after any changes to the occupation or use of the property. As with all other aspects of service charges, changes should be explained and shared with everyone concerned.

How do I know how much has been spent and how much to budget?

Owners should provide you with:

- an estimate (budget) for the likely service charge for the year ahead, including an explanation of the itemised costs (delivered no later than one month before the start of the 'service charge year')
- a statement setting out in detail the expenditure incurred for the previous year (delivered as soon as possible after the service charge year-end, but certainly within four months).

Good communication is essential and owners should make sure that the accounts clearly explain the reasons why any actual costs were different from budget estimates. In addition, owners should ensure the layout of accounts is similar each year, so that everyone who reads them can easily compare changes year-on-year.

If you wish to ask questions about the accounts you should do so within a reasonable period – we would suggest four months from the date the certified accounts were issued.

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Will I have an opportunity to vet the figures?

Ensure that you receive accounts of the actual expenditure. Best practice is for these accounts to be reviewed by an independent firm of qualified accountants who can certify that the expenditure is properly incurred under the terms of the lease. Some leases stipulate that the accounts should be signed by a chartered surveyor or an accountant.

How can I avoid being overcharged?

There can be disagreement about the quality – and therefore the cost – of work that needs to be carried out and about the cost-effectiveness of the contractors that the landlord employs.

In practice, this means that:

- the property owner should obtain competitive quotations for the various services and should select suppliers based on a value-for-money assessment of the services offered
- the costs of the services should be transparent so that everyone involved is aware of how the costs are made up
- the owner should ensure that all costs have been incurred in accordance with the lease
- owners should hold service charge money in one or more separate bank accounts.

What if we can't agree on the service charge?

Poorly managed service charges can cause disputes between owners and occupiers, and inevitably, disagreements will arise from time to time.

You have a right to reasonably challenge the propriety of expenditure on services, although you will need to bear the costs of the challenge, unless other arrangements have already been agreed (e.g. by court determination).

Alternative Dispute Resolution (ADR) has been introduced because the courts are increasingly encouraging people to resolve all sorts of disputes – from divorce to service charges – without the need to go to trial. The courts may ask for evidence that ADR was properly considered prior to going to court.

It is worth noting that if you have a dispute over service charges it may also affect other occupiers of the property (a situation known as a 'joinder'). This means that it can be helpful to deal with related disputes from more than one occupier at the same time.

RICS Dispute Resolution Service (DRS) is a two-stage dispute resolution process that includes 'mediation' and 'expert determination'. DRS has access to a 'service charges panel' of trained and experienced service charge practitioners to help resolve such disputes.

For further information, contact:
RICS Dispute Resolution Service
Westwood Way
Coventry, CV4 8JE
t **020 7334 3806**
e **drs@rics.org**

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Rent reviews

If you occupy your business premises as a tenant, the lease document may provide for the rent to be reviewed at intervals: normally every three or five years. There is inevitable scope for disagreement on the level of the new rent and a chartered surveyor, with an intimate knowledge of the property market, has a vital role to play in advising and possibly, in representing you. You need to be sure that you comply – and in good time – with the various steps required by the rent review process. If you fail to do so, the rent that the landlord asks for may apply automatically.

When do rent reviews usually occur and what is their purpose?

Rent reviews take place at whatever intervals agreed in the lease. Their purpose is usually to adjust the rent to the current market level at the review date (see below).

Can rents go down as well as up?

It depends on the terms of the lease. Some leases say that the rent will remain at the same level or increase (if market rents have increased) at the review date. This is often referred to as an 'upward only' rent review clause. Other leases allow the rent to go either up or down, depending on market rents at the time.

Are rent review clauses the same in all leases?

No. The rent review clauses in leases are often long and complicated. This is partly due to the fact that each lease will reflect the needs of the particular occupier to whom it relates. Professional advice – from a chartered surveyor or solicitor – will help you to understand the implications of the rent review clauses in your own lease.

How is the rent review activated?

Normally, the first step in the review procedure occurs when the landlord gives you written notice that the review is to be activated. This is called a trigger notice. A specific figure will normally be quoted for the new rent. If this does not seem reasonable, you must write and say so immediately. Keep a copy of all correspondence. There may be deadlines in the lease which, if you miss them, may mean that you have to pay what the landlord is asking. Contact your chartered surveyor or solicitor on the procedures and either try to agree a new rent with the landlord or get your chartered surveyor to negotiate on your behalf. Above all, do not ignore the issue, it will not go away.

What happens if I cannot agree the new rent with the landlord?

The lease will usually specify a procedure for resolving the disagreement. Normally, it will state that you should first try to agree the new rent with the landlord. If you cannot agree on the new rent, the lease will usually state that you should try to agree on the appointment of an independent third party (a chartered surveyor specialising in valuation) who will decide the new rent. If you cannot agree on the appointment of an independent third party, the lease will usually provide for the appointment to be made by the President of The Royal Institution of Chartered Surveyors (RICS) or the Chairman of RICS Scotland if the property is based in Scotland.

The independent third party may act either as an 'arbitrator' or as an 'independent expert'. There are important differences between the two.

The appointment of the independent third party does not prevent you from continuing to negotiate with the landlord to try to agree the new rent.

What are the main differences between the roles of the arbitrator and the independent expert?

The functions of an arbitrator are similar to those of a judge, though the process is private and less formal than that of a court. An arbitrator reaches a decision – which is called an 'award' – after taking evidence from the different parties. The parties can agree to submit evidence to the arbitrator in writing or orally. If the parties cannot agree, then the arbitrator decides how evidence will be taken.

The independent expert, too, may receive evidence and listen to arguments, but also has a duty to make his or her own investigations to determine an appropriate rent.

Who decides whether the independent third party is to act as arbitrator or independent expert?

The rent review provisions in the lease will usually specify the capacity in which the independent third party is to act. In a few leases one of the parties, usually the landlord, has the right to decide whether the independent third party should act as an arbitrator or independent expert.

How does the independent third party procedure work?

The purpose of appointing an independent third party is to achieve a fair, final and relatively quick, inexpensive and informal final settlement of disputes about rent, without having to go to court.

On what basis is the revised rent established?

The review provisions will usually require the independent third party to make a number of assumptions which will be set out in the lease. The rent will usually be assessed by applying evidence of rents agreed on the letting, rent review or lease renewal of broadly similar properties let on similar terms at approximately the same date. Remember that, if the rent review clause is **upward only**, the rent will adjust to the open market rental value only if this is higher than the current rent.

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How does RICS choose the arbitrator or independent expert?

The President will appoint a chartered surveyor with specialist training and experience to act as arbitrator or independent expert. A person will not be appointed if there is a real danger or even reasonable perception of bias, but it should be realised that the arbitrator or independent expert will be someone who has had a lot of experience in the market. He or she will probably have had dealings with other properties in the area. It is generally considered to be in the interest of both landlord and tenant that the person appointed has significant knowledge of the market and appropriate expertise. This can only be achieved if the person appointed has been active in the market and dealt with similar properties.

On what basis is the arbitrator or independent expert paid?

Following the appointment, the arbitrator or independent expert will ask you and your landlord to agree to the fee to be charged. Fees are open to negotiation and are usually agreed, but the arbitrator or independent expert has a duty to proceed even if agreement has not been reached. If you or the landlord feel that the fees are too high, there are procedures for challenging them in court after the rent review has been settled.

Does the landlord or tenant need to be professionally represented in arbitration or independent expert proceedings?

Arbitration and expert determination proceedings are usually less formal, when compared to court proceedings, and it is not obligatory for you or the landlord to be represented, either by a chartered surveyor or a solicitor. However, expert advice can be invaluable, both in interpreting the precise terms of the lease (which will have an effect upon rent) and in obtaining details of transactions relating to other premises which may influence the level of rent. Landlords are very often advised by chartered surveyors and may be expert in property matters themselves.

Presenting a case to an arbitrator without professional help can be risky. A surveyor who acts for you in dealings with the arbitrator is best placed to present specific evidence of comparable transactions and also to give an opinion as an 'expert witness', based on professional knowledge and judgement. Where disputes are referred to independent experts, the presentation of a case may be somewhat less important because an independent expert must make his or her own investigations and use his or her personal knowledge when making a decision. Nevertheless, it is advisable to use professional help to present a case.

What happens when the arbitrator or independent expert has reached a decision?

The decision – an arbitrator's 'award' or independent expert's 'determination' – is usually released after his or her fees have been paid.

Who pays the fees of the arbitrator or independent expert?

The lease normally stipulates responsibility. In the case of the independent expert, the fees will usually be payable equally by the parties. Sometimes the expert has discretion and will determine that, one party may be liable to pay all, or a specific proportion, of the fees. In an arbitration, the arbitrator has complete freedom to decide how the fees and the costs of the parties are to be apportioned. This is the case even if the lease states that one party should pay all of the arbitrator's fees.

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When does the new rent become effective?

Once the arbitrator's award or independent expert's determination has been issued to the parties, any increase in the rent previously payable will become payable immediately and will be effective from the rent review date, even if that date has passed. Often, leases will provide for interest to be paid on the increase in rent from the date of the rent review until the date of payment.

Is an award or determination final?

An arbitrator's award is final and binding, and it cannot be challenged in court merely because one party disagrees with it. However, in very limited circumstances involving points of law or misconduct by the arbitrator the High Court (the Court of Session in Scotland) has the power to set it aside on points of law or misconduct by the arbitrator. There is no right of appeal against an independent expert's determination. However, if it can be shown that the expert has been negligent, it may be possible to obtain compensation by way of damages through the court.

Are there alternative and possibly cheaper ways to settle a rent dispute?

Yes. The parties can, or course, settle a rent dispute by negotiation. Alternatively, it is possible for the parties, by agreement, to refer the dispute to a mediator. Mediation can be described as negotiation which is helped along by an independent third party. The role of the mediator is to help the parties to find common ground, prevent them from becoming entrenched and help them move towards an agreed and amicable settlement.

Mediation can produce a quicker and less expensive resolution which satisfies both parties. A mediator is different from an arbitrator or independent expert in that he or she would have no authority to impose a rent upon either party. Rather, the role of the mediator is to help the parties to reach an agreed settlement.

Information regarding the whole range of dispute resolution procedures, including mediation and the Small Business Scheme may be obtained from the RICS Dispute Resolution Service (**rics.org/drs**). Advice on rent reviews, arbitration and expert determination procedures is available from RICS Rent Review and Lease Renewal (E: **drs@rics.org**).

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Renewing a lease

It can be a worrying and uncertain time for business tenants when a lease comes near to expiry but it can also be a time of opportunity. You may be able to renew the lease on better terms or you may be able to move to more suitable premises.

The end of a lease does not normally mean that you have to move out of your existing premises unless you want to, because the law generally gives security of tenure to business tenants (there are exceptions, however). If you want to exercise your right to a new lease there are vital steps you must take within prescribed time limits. As the procedures are complex, you need to enlist professional help well in advance. Delay can be serious – you might find you have lost your right.

What follows is based on the law and practice in England and Wales. Different procedures apply in Scotland and Northern Ireland.

When should I start thinking about the end of my lease?

It is never too early to plan, but you should begin at least 18 months before your existing lease ends.

What should I do first?

Think about the objectives of your business and prepare a plan of your property requirements, for the short and long-term. Ask yourself some key questions:

- Are your present premises too big or too small?
- Are they an asset to the business or an burden?
- Do you want the security of a long lease or the flexibility of a shorter one?
- Would it make sense to move to another building and would you face a big bill for dilapidations if you did so (**see section 19 Dilapidations**)?

Your chartered surveyor will be able to help you in working out your property strategy. If you decide on a move, **see section 01 Finding the right premises**. Otherwise, read on.

What are my rights as an existing tenant?

Most business tenancies in England and Wales are protected by the Landlord & Tenant Act 1954. The purpose of this Act is to provide businesses with security of tenure. So long as the business remains in occupation of the property and follows all the correct legal procedures, you have a right to apply to a court for a new tenancy if you are protected under the Act. The landlord is allowed to oppose your application in some circumstances. If you cannot agree with the landlord, the court will decide whether you should be offered a new lease and on what terms.

When may the landlord refuse to grant a new lease?

The usual justifications for refusing a new lease are:

- the tenant is not occupying the property for his or her business
- the tenant does not follow the correct legal procedures
- the court upholds the landlord's objection to a new lease, usually because the landlord wants the property for his or her own occupation or wishes to redevelop it (you might be entitled to compensation for disturbance in these cases), or perhaps the tenant has seriously breached the terms of the current lease
- a court order was obtained at the start of the lease agreeing there would be no security of tenure.

What are the formal legal procedures to get a new lease?

This is an area where mistakes or delay can be exceedingly costly. If you have security of tenure, and wish to protect it, there are certain formal notices that you must serve and respond to within stated time limits. Don't try to go it alone – consult your solicitor in good time and bring in a chartered surveyor when it comes to getting a new lease on terms that suit you.

The important point to grasp is that lease renewal involves three separate processes:

- service of a formal notice by either landlord or tenant bringing the existing lease to an end on or after its contractual end date
- negotiation with your landlord to secure a new lease
- application to the court to protect your legal right to security of tenure. The date by which this needs to be done can be difficult to understand. If you get this wrong, you lose the right to renew.

You need to apply to the court even if you think in practice that your landlord will not be happy to grant you a new lease on acceptable terms. This protects your legal position. If you then negotiate a lease that suits you with your landlord, the court does not need to become involved further. If things go wrong the court has the power to require the landlord to grant you a new lease and to set the terms. It may also set the terms where the landlord offers a new lease but the parties cannot agree the detail.

The notices to be served to protect your position – and their timing – will vary from case to case. So call in the professionals at the earliest possible stage.

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How are the terms of the new lease settled?

Usually by negotiation between the landlord and tenant or their respective chartered surveyors. **Sections 03 Taking a lease** and **10 Rent reviews** explain the main points at issue. A chartered surveyor can advise you on your choices and the terms that you might realistically achieve.

If any term cannot be agreed and you need to involve the court, its approach will usually be to reflect the terms of the old lease (apart from the figure for the rent payable) unless either party can show good reason to make a change.

In what circumstances should I agree to give up security of tenure?

Only when you have no realistic choice, and only after taking professional advice. If your existing tenancy is not protected by the Act, you are in a weak position to argue for protection for the new tenancy. Landlords may also be reluctant to concede security of tenure in the case of a sub-lease or where the lease involves only part of a property.

How is the new rent set?

The rent will usually be agreed at the current open market level for properties of a similar type in your area. A chartered surveyor will be able to advise on the likely level that can be agreed. As a general rule your landlord is not allowed to take into account any improvements to the property that you have carried out during the term of the lease or any extra value that might arise from your trading from the property.

What happens if the new lease is not agreed before the old lease expires?

If your old lease is not protected by the Act (in other words, if you do not have security of tenure) then your landlord can require you to leave the property when the old lease expires, so it is vital to negotiate a new lease in good time.

If you have security of tenure under the Act, you retain that security of tenure following the end of your lease. This remains the position and would only be lost if a court decides your landlord has grounds for regaining possession.

How does the court procedure work?

If it becomes necessary to involve the court, then your solicitor may arrange for a court hearing to resolve the dispute. Both the landlord and tenant will usually appoint barristers to argue their case and expert witnesses to provide evidence of rental values. Your expert witness will usually be a chartered surveyor. Resolving the dispute in court can be a lengthy and expensive process and you should seek advice from your solicitor and chartered surveyor on the likely costs and the probable timescale.

What are the alternatives to the court for resolving disputes?

RICS operates a dispute resolution service under which disputes about the level of rent may be referred to an ‘arbitrator’, ‘independent expert’ or ‘mediator’. The procedures are explained in **section 10 Rent reviews**.

In addition, if you and your landlord are agreed that a new lease is the way forward, but you cannot agree the lease terms or a new rent, then you may consider the PACT Scheme. This Scheme provides an opportunity to have lease terms and rent decided by an arbitrator or independent expert appointed by RICS or the Law Society, rather than a judge in court. Details of the PACT Scheme may be obtained from the RICS Dispute Resolution Service.

What happens when terms for the new lease are agreed?

The solicitors will draw up a new lease setting out all the details. Ask a chartered surveyor to read through the lease to make sure it properly reflects the agreement. Read the lease yourself as well and ask your solicitor or chartered surveyor to explain any terms you do not understand or are not happy with. Do not sign before you fully understand and accept the terms.

At what stage can I still change my mind?

You are not committed to the terms of the new lease until you sign it. If you cannot agree terms that you are happy with, or if you simply change your mind, you can usually leave the property by asking your solicitor to give written notice to your landlord.

Scotland

The law in relation to renewal of leases in Scotland is very different.

- **There are no statutory rights to renew a lease of business premises (subject to what we say below about shops).**
- **If the landlord or tenant serves notice of termination – usually at least 40 days notice – before the end of the lease, it will terminate with no right to renew. The parties are of course free to negotiate a new lease but that is purely a commercial negotiation which may or may not result in a deal.**
- **If notice of termination is not given, the lease continues for a year (or the original period of the lease if shorter) at the same rent etc. The lease can continue year on year on this basis until one party serves a 40 day notice of termination. That will bring the lease to an end at the anniversary of the original lease termination date. E.g. if the lease originally ran to 31 December 2013 but is running on because no notice has been served, but notice is then served on, say, 2 February 2015, the lease will terminate on 31 December 2015.**
- **The Tenancy of Shops (Scotland) Act do give shop tenants some limited rights of renewal. Basically, the tenant can apply to the court for a one year extension – which can be renewed year to year – but the court has a discretion whether to grant the application, and it won't do so, for instance, if the tenant is in breach of the lease or has refused a reasonable offer to buy the premises, or if renewal would be more unfair on the landlord than not renewing would be on the tenant. Application must be made within 21 days of receiving notice of termination from the landlord. 'Shops' for this purpose are defined widely and have in the past included hairdressers, post offices and garages etc.**

Northern Ireland

- **The Landlord & Tenant Act 1954 is largely replicated in Northern Ireland via the Business Tenancies (Northern Ireland) Order 1996. However significant differences pertain and again you should take specific legal advice.**

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Tax allowances on property

There is no point in paying more tax than you have to. Some of your property-related spending may be allowable against your profits for tax; but this depends on the classification of the expenditure – a highly complex area where you really need the specialist advice of your chartered surveyor and accountant at the earliest possible stage.

What are capital allowances?

Capital allowances are a tax relief designed to allow the cost of certain of your company's assets to be written off against taxable profits. If you buy an asset for use in your business you may be able to claim a capital allowance for that expenditure.

Capital allowances are available to sole traders, self-employed people or partnerships, as well as companies and organisations liable for Corporation Tax.

How many types of allowances are there?

The most common type of capital allowance is for plant and machinery (P&M), but for many businesses this is only one of the types of capital allowances that can be claimed. The others are:

- business premises renovation allowance (BPRA)
- enhanced capital allowances (ECA)
- mineral extraction allowance
- research and development allowances (RDA, previously known as SRA – scientific research allowances)
- know how
- patents
- dredging
- assured tenancies.

What qualifies for allowances?

Capital allowances are complex and not always very logical. However, shops, offices, leisure facilities, care homes, factories, airports and countless other types of buildings often contain large amounts of plant and machinery that qualify for capital allowances. This value will represent a significant proportion of the cost of the property as a whole. Some examples of items that can be plant include air-conditioning systems, lifts, IT/data cabling, sanitary appliances, alarm and security installations, some floor finishes, moveable or demountable partitioning systems and electrical installations.

In all cases, expenditure on the provision of plant and machinery does not include expenditure on land. Also, with very few exceptions, expenditure on the setting or premises are not allowable either. In case law, building, premises and setting are all terms which mean the building fabric. Chapter 3, sections 21 to 25 of the Capital Allowances Act (CAA 2001) set out what parts of buildings and structures can and cannot be plant.

The table below shows the rate of capital allowance for different classes of property/asset. In other words, the annual amount of eligible expenditure you may offset against your profits, before applying your tax rate. Over time, the total cost of the allowances identified on the asset should be recoverable via these tax allowances.

Type of property or asset	Rate of annual allowance %	Notes
Plant and machinery – main pool	18	Includes various items of plant and equipment in commercial buildings (see text), but excludes anything that is defined as integral features or new assets that are classified by legislation as long-life
Plant and machinery – special rate pool, including long-life assets	8	For integral features plant and machinery* and other items with an economic life, when new, of 25 years or more
Energy-efficient plant that qualifies for enhanced capital allowances (ECAs)	100	Energy-efficient plant and machinery meeting legislative criteria. Includes combined heat and power, motors, boilers, lighting, insulation, etc. See **decc.gov.uk**
*	**Integral features** are listed at CAA 2001, Section 33A. They are: • electrical systems • cold water systems • heating, ventilation and air-conditioning installations • lifts, escalators and moving walkways • external solar shading.	

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How is property expenditure classified?

Broadly, between 'revenue expenditure' and 'capital expenditure'. Revenue expenditure may be charged against your income before arriving at the profits that are subject to tax. Capital expenditure is spending on items that remain on the balance sheet beyond the year-end as an asset of the business.

Though these assets will be depreciated in your accounts, this depreciation is not allowable against profits for tax purposes. Instead of this you may charge against income a 'capital allowance' in respect of money you have spent on certain classes of asset. Unfortunately, only certain categories of property qualify for a capital allowance.

What qualifies as revenue expenditure?

Revenue expenditure would cover your spending on 'consumable' items that will have no value after the year-end, such as rent, insurance, building repairs, salaries, stationery and the like. The definition of 'repairs' may be complex and you need professional advice here.

What qualifies as capital expenditure?

In general terms, capital expenditure is spending associated with the creation or acquisition of an enduring asset, typically covering semi-permanent or permanent items that will have a value beyond the end of the financial year. Examples of capital expenditure include your spending on buying a property, on a new shop front, on a new computer system, new heating equipment, new manufacturing equipment, etc.

Where is the dividing line between capital and revenue spending?

This is an area that has caused difficulty for taxpayers and HMRC for many years, as the division is not always clear cut and can vary from project to project. If the whole of a property is new there is very little doubt that all of the costs should be capitalised. However, if you extend an existing building and the original building is in need of some maintenance, which you, for convenience sake, roll into your new extension project, the divide becomes less clear. Any works done to renew anything on the original building in its entirety (the whole roof for example) will be classed as capital. If, on the other hand, you do a patch repair to the roof or replace one or two windows, this cost can be treated as a revenue expense (this is sometimes referred to as revenue within capital).

You need to look at the works you are doing in these situations and decide how the expenditure would have been classified if you had done the work as two separate projects. Generally, any replacement of a whole asset, such as an entire roof, will be regarded as creating a new asset. Any replacements that involve an element of upgraded specification, for example double glazing to triple glazing, would not be classed as a repair.

Repairs would normally be a revenue expense. However, if you buy or rent a dilapidated building at a price which reflects the state in which you acquired it and the fact that money will need to be spent to bring it up to a useable standard, the cost of the works, even though they are of a repairing nature, may be classified as capital. You will only be able to get a tax deduction for this work to the extent that any of it qualifies for capital allowances.

Be assured that you cannot have it both ways. Increasingly, HMRC requires your tax accounting and your published accounts to follow the same lines (except in the case of depreciation!). So if you capitalise an item in your accounts but claim it as a revenue deduction in your tax calculations you cannot be sure of getting 100% tax relief against your profits and you may have to add it back and claim capital allowances, where appropriate.

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How do you make a claim for allowances?

No capital allowances will be given unless you make a claim for them in a tax return. Because of the system of writing down allowances, over time the total cost of the asset is recoverable. Generally, the bulk of the allowances are given in the first eight to 10 years.

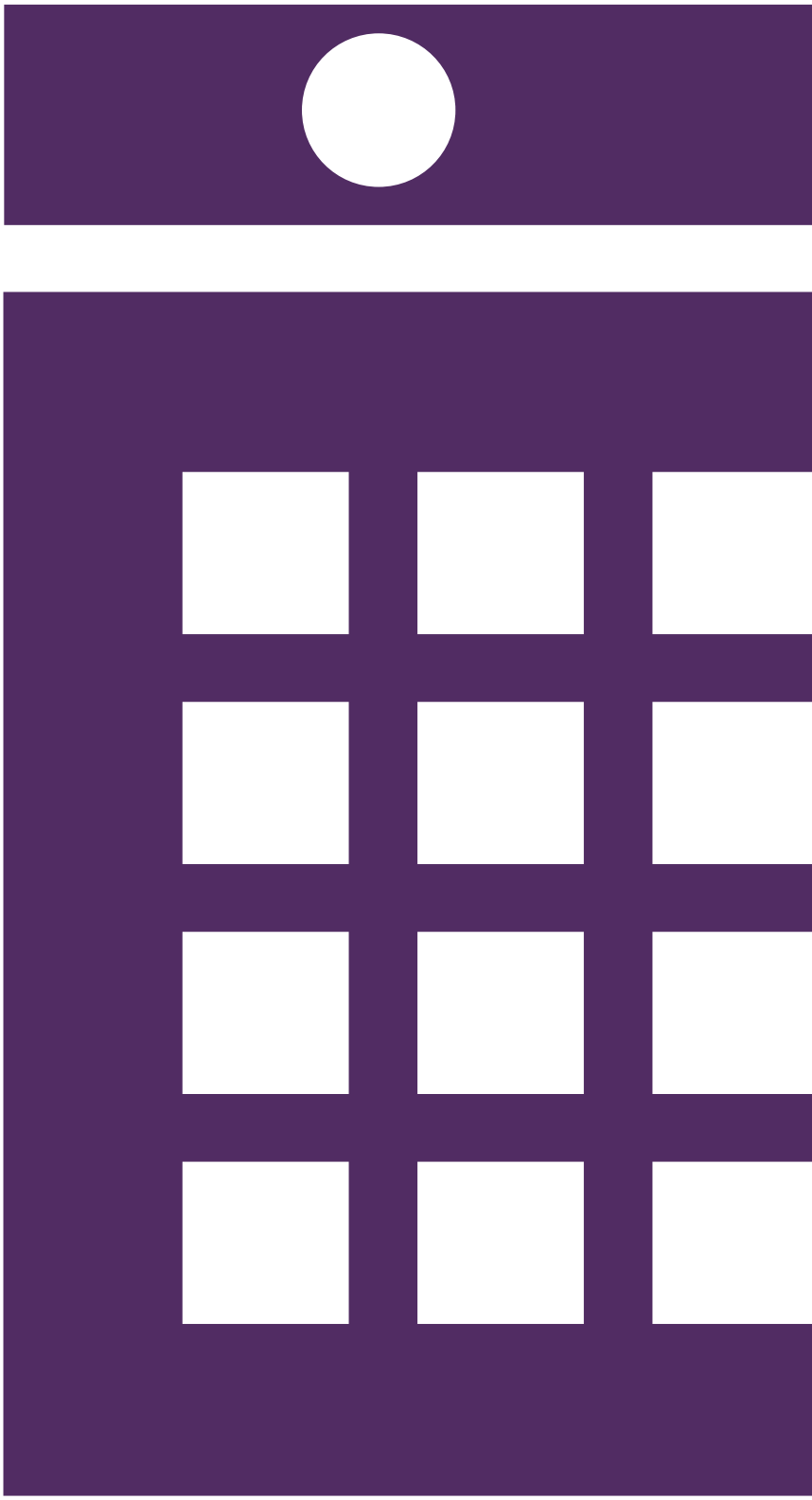
When speaking of 'preparing a claim' it is assumed that it is clear what does and what does not qualify as a claimable asset and all that needs to be done is to list these out. In reality it is much more complex. As legislation, case law and even building techniques have moved on, the number of areas that are not really clear has grown too and so applying the rules to the facts is not as easy as it may have once been.

Making a capital allowances claim requires a lot of planning, research, legal argument and clear presentation. Due to the complexity a key consideration is whether the amount of work required can be justified in relation to the cost of the exercise and the eventual value of any claim.

Take professional advice to be clear about what could be possible and make an informed decision on whether or not to proceed.

Can I plan ahead to minimise tax?

Yes. Before embarking on any major expenditure, you should understand and plan its revenue and capital allowance consequences. So call in your property tax adviser (chartered surveyor and/or accountant) at this point, not when the work is already under way. It is a good idea to take notes and photographs of the condition of the building before repairs or improvements are carried out and to record the reason for the work. These may help 'prove' subsequently to your inspector of taxes that the expenditure should be tax deductible. Capital allowances may also be obtained retrospectively on earlier expenditure, so there may be opportunity to lodge significant new claims or review and improve previous claims where you still own the assets.



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Planning property cash flow

Property costs are an important part of operating expenses for most businesses, whether you own or lease your premises. It is therefore vital to have a clear view of the outgoings relating to your property and of when the major items of expense will occur.

If you are a tenant, there will also be points in the lease calendar that require action on your part. These include the dates of possible break clauses and rent reviews and, of course, the date when the lease itself expires. You need to be certain that you protect your position by observing the formal steps and serving the formal notices that may be required and you need to budget for the expense of professional advice that will probably be needed from your chartered surveyor and/or solicitor.

You should draw up a property cash flow chart, showing the important property dates and payments. If you are a tenant you should read your lease and mark on the chart the important dates (getting your chartered surveyor or solicitor to give you a hand, to avoid mistakes). The vital dates include the rent review date, the date of any break clause and the date the lease ends. The entries should include the dates for serving notice in relation to break clauses or requesting a new lease. The chart should also show when you are required to redecorate the premises.

As well as making sure that you do not overlook any lease obligations or the need to serve essential notices, the chart will show you what your annual costs of occupation really are and when you may need to budget for the increase in rent that could follow a rent review.

Example of property cash flow table

	Period			
Item	**Date/Amount**	**Date/Amount**	**Date/Amount**	**Date/Amount**
Rent				
Rates				
UBR				
Water				
Decoration				
External				
Internal				
Insurance				
Service charge				
Fees				
Rent review				
Lease renewal				
Chartered Surveyor				
Solicitor				
Other				
TOTAL				

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Keeping good property records

When problems related to your premises crop up, a good record-keeping system helps you to respond quickly. If you suffer a break-in, for example, it will allow you to identify what is missing and make the appropriate insurance claims without delay. It helps you to identify losses through theft and also to identify poor quality equipment that fails rapidly.

Planning the record-keeping system

A property record-keeping system falls into three main parts:

- the premises
- the contents
- the occupants (your employees).

The records may be kept on computer or they may be in hard copy form. Whichever system you use, it needs to be up-to-date, accessible and accurate. It must be flexible to account for changes brought about by additions and deletions. Your property records should also be backed-up outside the building in case of fire, etc.

What are the main records relating to the property?

These will include records relating to buildings, including records of any restrictions or permissions such as planning consents, bye-law approvals, licences, agreements and approvals. If you lease your premises or have granted sub-leases to tenants, the leases would clearly be part of the property records. Contracts would include any agreements regarding boundaries, licences, building contracts or maintenance contracts. Building insurances, with details of requirements and restrictions, would also be included.

How should I record the contents?

Tag each item with a reference. It can then be identified easily even if moved from one part of the premises to another. You will also need details of purchase price and date, together with replacement cost, for your insurance policy. If you are a tenant, identify clearly what items are yours and what belong to the landlord.

Your schedule of electrical items should be cross-referenced to the service contract for their testing under the requirements of the Electricity in the Workplace Act.

Include a listing of contracts or conditions applying to the contents, including the contents insurance policy, leasing policies, hire purchase agreements, purchase documents with warranties and guarantees, maintenance agreements and service contracts.

Although computer equipment counts as content, its specialist nature means that it is better to schedule this equipment and its service requirements separately.

Making the most of space

A business needs to maximise its space. To have more space than you need imposes an unnecessary cost burden, but if your business is expanding you need to be sure that you will have adequate space when it is required.

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The way you design and use your space has an important effect on productivity and quality and also helps to reflect the image you are trying to create for your business.

How do I start planning my space use?

Start with a three-step approach:

- calculate the space needed for each area of your business
- prepare a forecast of the way your space requirements are likely to change over a period
- cost out the space requirements you have arrived at, look at the different ways you satisfy these requirements and test out the results against your business plans.

Putting the figures together

Add together all your individual space requirements to calculate how much you need now. Then look at each element and try to assess how it could vary over time. This calculation would give you your theoretical space requirement but you would need to allow extra for circulation space and corridors: perhaps about 25%. Do not forget equipment such as photocopiers and faxes which occupy space.

Once you have prepared this breakdown you can start testing it against your existing space or you can start looking at other property options.

What if I have too much or too little space?

By the time you have done your preliminary planning, you will begin to get a feel for the way space is driven by your business' requirements. You may have concluded that productivity is being affected by lack of space or you may realise that you have some space that is surplus to requirement. If you want to avoid taking on more space or if you want to free some of your existing space for sub-letting, there are various options you should consider.

Will an open-plan layout save me space?

In many cases, yes. A lot of fixed offices are generally a more expensive and less flexible use of space. So always challenge whether fixed offices are necessary – but do not forget that you will need some meeting rooms for private meetings or client presentations.

It is a good idea to approach your planning from the standpoint of **space needed for the job** rather than **space that reflects status**.

How important is choice of furniture?

The type of furniture you use has a big impact on the amount of space you need. Business furniture falls into one of two main categories: freestanding or system furniture. System furniture is designed in the form of components which can be put together to form workstations. It is likely to be expensive but in most cases can save you space and therefore money.

Could hot desking save on space?

Quite possibly, though it depends on the nature of your business. The principle of hot desking or shared workspace is that you do not allocate a personal desk or workstation to each employee. When they are in the office, employees use whatever workstation is free. This works best when individuals spend a fair part of their time away from their desks – on site or visiting clients.

How should I deal with surplus space?

Usually by sub-letting it to provide a rental income. The first step is to arrange any surplus space into areas which are capable of being let. This means that the space has to be divided off from the rest of your premises and a separate entrance will need to be provided for the tenant.

If you occupy your premises under a lease, before you get to the point of undertaking alterations or building work you will need to check what restrictions there are on sub-letting and what permissions you will require from your landlord. Your chartered surveyor will be able to help to explain the situation and advise you on procedures. Your chartered surveyor will, of course, also be able to help with the approach to marketing your surplus space.

Finally, you might save some money on business rates. Once you have vacated the surplus space and divided it off, you could have it separately rated, then pay reduced rates on the vacant part.

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Construction and alterations

Whether you are considering simple alterations, a more complicated refurbishment or extension or a completely new building, a chartered surveyor will be able to advise on all stages from inception to completion.

The time and effort spent on the planning and preparation stages of a building project are vital. If you get this right, you can save considerable amounts of time and trouble on the actual construction work.

Are procedures different for alterations and for new building work?

In essence, no. The same logical approach will ensure that you achieve what you are aiming for with the minimum of expense and fuss but there are some differences in detail.

If you are a tenant you are more likely to be undertaking internal alterations than extensions or new building work. Under the terms of your lease you will almost certainly require the landlord's permission – in the form of a 'licence' – for this work.

Where do I start?

Clearly, you will have a rough idea of what you are trying to achieve with the alteration or building work, but there are some other decisions you need to make at the outset. Is appearance more important than function? What level of quality are you aiming for? A high quality product is not always the best solution if a simpler structure might work just as well.

On the cost side there are several points on which you need to be clear. Do you want to be certain on final costs from the outset? This assurance might put the price up. Have you considered the cost of maintaining the structure (and related costs) when it is completed? Extra expenditure at the construction stage could save money later.

Bringing in a chartered surveyor

Engage a chartered surveyor with detailed experience in buildings, especially designing and managing new building works. The surveyor must have good local knowledge and expertise in planning, designing and administering projects. Instructing the contractor and inspecting progress are the most important part of any building work.

You will need to explain to a chartered surveyor what you want in terms of space, finish, equipment, access and similar matters. He or she can then prepare an initial sketch design of your proposals and an outline of the costs. You will also want an indication of how long the work will take. If you need the work completed by a particular date you will need to make this clear in advance.

A chartered surveyor can take your responses on board and draw up a detailed scheme, including likely costs and a programme for the whole project. Detailed construction drawings and the specification of works will then be prepared.

What local authority approvals will I need?

The detailed drawings will be needed for the requisite local authority approvals. There are two principal types of approval: 'planning permission' and 'building regulation approval'. The two different types of approval are separate and have separate procedures. If your building is either listed or in a conservation area you may also require listed building or conservation consent.

You will have to conform to building regulations (and in some cases obtain fire authority approval – e.g. where the building is put to a 'relevant' use), even for internal alterations. Your chartered surveyor will be able to advise you on the necessary applications and discuss any points with the building control body, which might be the local authority or the 'Approved Inspector' building control service.

The tendering process

Once you have planning permission (if necessary) and building regulation approval, go carefully through the drawings and specifications to make sure it is exactly what you want. Changes at a later stage may be disproportionately expensive and could cause delay.

Once you are satisfied, your chartered surveyor will prepare tender documentation, which could take the form of a 'specification' or, for larger projects, a 'bill of quantities'. Usually, tenders would be obtained from at least three contractors. These documents will form part of your contract. Your chartered surveyor can help evaluate the result and select the right contractor.

How will the work be administered and inspected?

Get this clear at the outset. The best course is to name your chartered surveyor as contract administrator on the agreement you sign with the chosen builder. The person named as contract administrator will issue instructions and make sure that the work is properly carried out in accordance with the contract, drawings and specifications. If you have appointed a contract administrator, do not be tempted to intervene and give instructions yourself. This can lead to endless confusion, acrimony and considerable extra cost.

Do not accept the finished work until your contract administrator is fully satisfied. Even after the new structure has been handed over there will be a 'defects liability period' of between three and 12 months. During this period your chartered surveyor will inspect the building and get the contractor to remedy any defects that emerge.

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Planning permission

If you intend to alter or extend your premises, carry out a different trade from the premises or even construct a totally new building, you face two important questions. Do I need planning permission? If I do, how do I obtain it?

Planning is a complex and difficult area and professional advice is essential. Treat what follows as an outline of a system which has numerous exceptions and booby-traps for the unwary! Chartered surveyors understand planning law and practice and the effect that any development will have on the future use and value of the property and they can act as your personal agent in planning matters. Call them in before you hit problems. Don't wait till afterwards.

As a result of devolution, planning law, policy and guidance in Wales, Scotland and Northern Ireland differ from that in England. This section deals essentially with the position in England.

It also presumes that your property has not been listed for architectural or historic interest. If you own a listed building, or your premises are in a conservation area, different and stricter rules apply, and breaches of these consent regimes are a criminal offence.

When do I need planning permission?

Planning permission is required by law for all forms of 'development' – a broad term that may embrace even a change of use where no physical alterations are involved. The Town & Country Planning Act defines development as being:

'the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any building or other land.'

There are, however, exceptions to the general rule. Planning permission is not usually required, for example, for internal alterations (though alterations to listed buildings may require listed building consent). In addition, small external alterations, the construction of walls and fences below a certain height and certain changes of use may not require a planning application. In order to determine whether or not planning permission is required, you or your chartered surveyor may check informally with the local planning authority. Alternatively, for a fee you may obtain a formal decision from the authority known as a 'lawful development certificate'.

When does change of use require permission?

When you purchase or lease premises, there is likely to be an existing or established use attached to the premises. Change from this use may require permission. It is vital to find out if permission is required for the use you propose and, if so, whether or not permission is likely to be granted. The local planning authority may be able to provide advice on this point. Formal confirmation can be obtained from the local planning authority by way of the lawful development certificate procedure.

Change of use is regulated through categorising similar types of use into a 'use class'. Planning permission is not required where the proposed new use of the premises falls within the same use class as the existing use. In certain cases it is also possible to change the use between classes without needing permission.

Do I need planning permission if I run my business from home?

Working from home will not always require planning permission. For example, using just one room of your home as a personal office, as a doctor's or dentist's consulting room or for music or language teaching will not necessarily require permission, but there is a condition: the character of the house must remain that of a private dwelling and your activities must not result in disturbance to adjacent residents through, for example, generating additional traffic and parking. It is always advisable to check with the local planning authority to be on the safe side.

Does an extension require planning permission?

Planning permission will not always be required for minor extensions or additional buildings within the boundary of a property, but the rules are complex and you should take professional advice.

Do I need planning permission to build new premises?

Almost certainly, yes. Right at the outset you would be well advised to discuss your proposal informally with the local planning authority before submitting an application. They will be able to advise you whether or not planning permission is likely to be granted and how any difficulties with your proposal can be overcome. The planning officer's advice is strictly informal, however, and he or she cannot guarantee that planning permission will be granted.

How do I apply for planning permission?

Applications for planning permission should be made to the local planning authority on the appropriate forms, which can be downloaded from their web site or they will supply on request. There will be a fee to pay when you submit the application. Fee levels are the same across England, but the fee will differ according to what you wish to do.

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Who can submit a planning application?

Planning applications may be made by anyone, regardless of who owns the land or buildings. However, if the applicant is not the owner of the entire site, he or she must formally notify the legal owner or part-owners and certain others who have a legitimate interest.

You may make an application for planning permission personally or you may instruct a chartered surveyor or other suitably qualified person to submit the application on your behalf. You would be well advised to employ a chartered surveyor where applications are complex or likely to be contentious.

Should I discuss my proposals informally with the planning authority?

It is often advisable, particularly in complex cases, to meet with a planning officer to discuss the application and the information that the council will require. If you have appointed a chartered surveyor to submit your application, he or she can do this on your behalf. A fee may be payable to the local authority for this consultation.

However, there may be situations where the authority will feel unable to comment. In any case, informal remarks by planning department staff should never be construed as a guarantee that your proposal will gain permission. Planning committees can and do choose to overrule officers' advice, and sometimes new facts or problems do not emerge until the determination process has begun.

Are there different types of planning application?

Yes. Applications for planning permission fall into one of two categories: applications for 'outline planning permission' and applications for 'full planning permission'.

When should I apply for outline permission?

You should apply for outline planning permission only for new buildings and where you want to find out whether or not the proposal is acceptable in principle, without providing detailed drawings of the scheme. When outline permission is granted, you will subsequently need to obtain approval of all the details of the scheme (known as 'reserved matters') before work can begin.

What are the procedures for full planning permission?

To obtain full planning permission you must submit all details of the proposal, including detailed drawings, with the application. Applications for full planning permission must be made when you want permission for change of use, although detailed plans may not be necessary in this case. It may also make sense to apply for full planning permission in other instances where you want to save time and you know that the proposed development is acceptable to the council in principle.

Timetable for the planning decision

The statutory time limit for determining planning applications is eight weeks from the formal registration date of the application by the local authority. Do not rely on getting a decision within this timescale, however. In practice applications can take considerably longer, but the local authority will advise you if this is the case. You have the right to attend the planning committee meeting and certain local authorities also allow applicants or their agents to address the committee. If your scheme necessitates an Environmental Impact Assessment, the statutory limit is 16 weeks.

After the planning decision

Once the application is determined, you will receive a decision document from the local authority, saying whether planning permission has been granted or not and giving the reasons if it has been refused.

If planning permission is granted

If permission is granted, and unless the decision document states otherwise, the development must begin within five years of the grant of permission. If the permission is in outline only, you will be required to submit – within three years – further application(s) for the approval of the reserved matters before commencing the development.

Conditions attached to planning permission

Sometimes planning permission will be granted subject to certain conditions. These may restrict the use of the premises; restrict the hours of operation of a business or require specific approval for the materials to be used before the development can proceed. If a condition is not acceptable, you or your agent should discuss the matter with the local authority to see if an alternative can be negotiated. You may have to submit another application.

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What can I do if planning permission is refused?

If planning permission is refused, the decision document will clearly itemise the reasons for refusal. Again, discuss the decision with a planning officer to see whether, if you were to change your plans in a way that would overcome the objections, it would be worth making a further application.

If you do not wish to amend the proposal or if it is clear that the local authority objects in principle to the scheme, you then have the right to appeal (see below).

What if there is an unacceptable delay?

If you are not prepared to grant the local authority an extension to the eight week statutory period for making a decision, you may appeal to the relevant Secretary of State.

How does the appeals procedure work?

There are a number of situations in which you may appeal to the Secretary of State for the Environment or the Secretary of State for Wales against the local authority's decision. These obviously include outright refusal of planning permission, but also cover the imposition of conditions that you think are unreasonable and various other matters.

A planning appeal must be submitted to the Planning Inspectorate within six months of the date of the decision document from the local authority. If no decision has been issued, the appeal must be submitted within six months of the end of the period when the decision should have been made. Forms for submitting an appeal can be obtained from the Inspectorate's offices in Bristol.

Appeals may be dealt with in one of three ways. The chosen route is usually dependent upon the complexity of the case. Although you may submit an appeal on your own behalf, it is usually advisable to consult a chartered surveyor or other competent professional, in order to obtain professional advice as to which format will be most suitable for your particular case. Your adviser will also be able to submit the appeal on your behalf and suggest the most appropriate grounds of appeal.

How are planning decisions enforced?

If you carry out construction work or change the use of the premises without obtaining the necessary planning permission, the local planning authority may simply ask you to apply retrospectively for permission. Local planning authorities have to assess each application on its merits, in the light of the development plan and other material considerations. Therefore, you should not assume that an authority will be influenced into granting permission merely because the works have already been carried out. It may issue an 'enforcement notice', setting out what you must do to remedy the breach of planning control – which in extreme cases could involve demolishing the building that you have constructed. You do, however, have the right to appeal to the Secretary of State against an enforcement notice.

If you have failed to comply with a condition which forms part of a planning permission, the local authority may issue a 'breach of condition notice'. The notice will state what is required to comply with the condition. You have no right of appeal against such a notice.

Northern Ireland

This section assumes that your property does not lie within a Conservation Area or Area of Townscape Character.

The Planning (NI) Order 1991 is largely equivalent to The Town and Country Planning Act. With regard to changing uses the relevant legislation is the Planning (Use Classes) Order 2004 as amended. Fee levels in NI are set out in the Planning (Fees) Regulations 2012.

Some planning applications go to the District Council for their view before final decision but many are made by DoE Planning with consultation. Appeals are dealt with by the Planning Appeals Commission."

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Sales, assignments and sub-lettings

A systematic approach to disposing of property can minimise disruption and save time and money. The details depend on whether your interest in the property is freehold or leasehold and, if you are a tenant, whether you intend to assign the lease or to sub-let the property. In all cases you will need to arrange marketing for your property and to decide on other important points.

How should I choose a chartered surveyor?

The most important step is to choose a chartered surveyor as your agent who handles the marketing of properties like yours in your area. If you need guidance on your choice, ask two or three firms to visit you and to let you have a brief report setting out their marketing proposals and their views on price or rent, as applicable. Do not necessarily go for the firm that quotes the cheapest commission or the highest price or rent that might be achieved. Your feeling of confidence in the firm is more important.

The chartered surveyor's report should contain his 'terms of engagement', setting out the commission payable and details of proposed spending on marketing (which you would usually pay for). Your chosen firm will be able to advise you on the marketing period that will probably be needed, given the state of the property market in your area. This will be important if you need to plan your move to new property.

Tell your staff and customers of your planned move

This is often overlooked. Make sure that all your staff, customers and suppliers are told of your plans to leave the property before it is put on the market. A For Sale or To Let board might give the wrong impression unless people have been forewarned!

What are you leaving in the property?

Agree precisely what fixtures, fittings and other equipment you will be leaving for the new occupier. If you are a tenant, this will also involve identifying the landlord's fixtures and fittings that go with the building.

Have all information and legal documents ready

Prepare a dossier of background information on the property which can be made available to prospective buyers or tenants, including copies of planning permissions, building survey reports and plans of the property. If you are a tenant, information from your landlord on service charges will be useful.

You also need to brief your solicitor on the disposal as early as possible. This will give him or her a chance to locate title deeds or leases and to ensure that there are no obstacles to the preparation of a draft contract.

What are the tax implications of a disposal?

This will depend on the circumstances. Before putting the property on the market make sure that you take advice on the tax aspects to minimise liabilities and exploit any possible opportunities. You need to think of the capital gains tax position and possibly of retirement relief. Your accountant or chartered surveyor will also be able to advise you on your approach to the VAT position on the disposal, including the possibility of VAT on the premium if you are assigning a lease.

What if I am a tenant rather than an owner-occupier?

If you want to dispose of your interest in a property that you occupy under a lease that still has time to run, you have two main choices. You might assign the lease or you might sub-let the property. If you sub-let, you then become the landlord of the incoming tenant.

Assigning a lease means that you transfer the benefits and the obligations of the lease to somebody else, who then has the use of the property and becomes responsible for paying rent to the landlord and observing the other obligations of the lease. Unfortunately, this is not necessarily the end of the story. If the new tenant should later default on the terms of the lease, the landlord may still be able to demand that you pay the rent and fulfil the other obligations (see below).

If your present rent is below the market rate, and a new tenant would therefore pay a rent below market rate until the next rent review, your lease may have a capital value and you may be able to charge a capital sum also known as a premium for assigning it. On the other hand, if you should be paying a rent above the market rate you would probably need to pay a capital sum to the new tenant for taking on a lease under which he or she will pay a rent above market rate.

If, instead of assigning your lease, you sub-let your property to a new tenant, you remain responsible for paying the rent to your landlord and observing the other terms of the lease. Under the lease that you grant to your sub-tenant (the 'sub-lease'), he or she will then pay rent to you and be responsible to you for observing the other obligations of the sub-lease. These obligations will probably be similar to your obligations to your own landlord under your original lease. Thus, sub-letting involves a continuing management responsibility.

Your own lease will set out what you are and are not allowed to do by way of assigning or sub-letting, and the conditions that you will need to follow.

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What conditions would my landlord normally impose on an assignment?

Most commonly, your lease will permit assignment with your landlord's consent, which must not be unreasonably withheld. In essence, your landlord will be mainly concerned with the financial status of the 'assignee' – the prospective new tenant – about whom a considerable amount of information may be required. This might include three years' audited accounts and at least a couple of references. A guarantee for the rent and the other obligations of the lease might also be required.

What if the landlord refuses to allow me to assign my lease?

If your lease allows assignments, you or your advisers should first try to negotiate with the landlord to see if he or she would allow the assignment with certain amendments. A guarantee or a rent deposit might tip the balance.

Lastly, you could mount a challenge through the court, which is likely to pay most attention to the financial standing of the proposed assignee.

What continuing obligations do I have after an assignment?

This probably depends on whether your lease was originally signed before the beginning of 1996 or after. A change in the law on 'privity of contract' took effect in 1996 but was not applied retrospectively to existing leases. This is a complex area and you should ensure that your chartered surveyor or solicitor explains the position to you.

What conditions would a landlord normally impose on a sub-letting?

Again, it would depend on the terms of your lease. Your landlord would probably insist on approving the sub-tenant and the terms of your lease to the sub-tenant. Obviously, you cannot grant a lease to a sub-tenant which is longer than your own lease from your landlord.

Often your landlord will want your sub-tenant's tenancy to be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954. However, the landlord cannot insist that a sub-tenant be required to give up the right to security of tenure unless this was written into your original lease as a condition of sub-letting.

Remember that your landlord will require you to fulfil the obligations of your own lease and it is up to you to deal with any breach by your sub-tenant of the sub-lease that you have granted.

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19 Dilapidations

It can come as a nasty shock towards the end of a lease when the landlord requires extensive work from the tenant to remedy damage or disrepair or to put the premises back to its original state if the tenant has made internal alterations. If the tenant does not carry out this work, he or she may be required to pay the cost of having it done.

As a tenant you may be able to challenge the landlord's list of required repair work, referred to as a schedule of dilapidations. To be in a strong position to mount a challenge you need to consider the dilapidations question right at the outset, with the help of your chartered surveyor, before you sign a lease.

What are dilapidations?

The term is normally used to cover defects and disrepair which you as tenant will be required to deal with or pay to have remedied when you vacate the premises that you have leased.

When do I need to start thinking about dilapidations?

Before you take a lease. A survey will establish the condition of the premises, giving an indication of work that may be needed, both immediately and later. If the premises are already in bad repair, special considerations apply (see below). During the term of the lease, regular or planned maintenance can avoid greater expense later. It is usually a good idea to record the condition and layout of the premises before you occupy.

What if the premises are in a poor state at the outset?

Most commercial leases require the tenant to put and keep the property in repair. Unless you and the landlord specifically agree otherwise, the fact that the premises were in a poor condition when you took them on is largely irrelevant. You still have to put them right. So negotiate for a lower premium or a lower rent to compensate for costs that you face.

Alternatively, persuade the landlord to agree that the premises be returned at the end of the lease in a condition similar to the state in which you took them. In this case, after you have had the premises surveyed, make sure that their condition is established, recorded and attached to the lease as a 'schedule of condition'. Ensure that your solicitor varies the lease clauses to reflect the reduced obligations.

When is the landlord likely to submit a dilapidations claim?

Generally speaking, landlords do not serve dilapidations claims earlier than three years before the end of the lease. If you, as tenant, have a statutory right to a new lease, the landlord probably will not serve a dilapidations claim unless or until you indicate that you are unlikely to renew your lease.

What is the position on alterations I have made?

This depends on the terms of the lease and any licences that the landlord granted you to make alterations. On granting consent for alterations the landlord probably required that at the end of the lease you restore the property to its original state if requested to do so.

Therefore, unless the landlord thinks your alterations have added value, you will probably be required to reinstate the property at the end of the lease or pay the cost. The exception is if neither the lease nor the licence for alterations gives the landlord the option of requesting reinstatement.

Do I have to accept the landlord's dilapidations claim in full?

No, do not accept it without taking professional advice. A chartered surveyor may be able to reduce the figures and / or demonstrate that certain items should not have been claimed. The landlord may not in fact intend to repair the property; he or she might plan to demolish or alter. In these circumstances you would have a good defence in law to the claim because landlords should not claim for more than they have actually lost.

What if I cannot reach a compromise with the landlord?

If you cannot reach agreement, the landlord has recourse to the court, but this is a slow process and expensive for both sides. Landlords and tenants will generally avoid it if they can. Consult your solicitor as well as your chartered surveyor if things look like they are taking this course – in a court hearing your chartered surveyor will be able to act as an expert witness on your behalf.

Alternatively, disputes can be resolved by mediation, expert determination or arbitration. The RICS has a list of accredited experts and arbitrators who can be appointed by both landlord and tenant to resolve the dispute.

Further information can be obtained via the RICS Guide to Dilapidations: rics.org/dilapidations

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JANUARY 2013/VP/1164MM