

## Glossary of Terms

The following are terms and phrases that are used in the Community Asset Transfer Policy and supporting documentation or commonly in relation to the leasing of commercial property.

**Alienation** – Alienation provisions generally detail the tenant's ability to assign or transfer a lease.

**Alterations** – It's common for leases to mention alterations, which refer to how much you can modify the premises; for example, adding partition walls, replacing the electrics or changing the interior décor. Alterations will often require consent from the Landlord by way of a formal licence prior to commencing works. This is in addition to any planning or building control approvals

**Asset of Community Value** – also known as “Community Right to Buy” or “Community Right to Bid” allows defined organisations, including Parish Councils, to ask the Council to list certain assets as being of “community value”. This is designed to give communities more opportunity to take control of assets and/or facilities important to them. If an asset is listed and then comes up for sale, the new right gives communities a total of 6 months to put together a bid to buy it. There are separate policies and processes relating to Assets of Community Value.

**Assignee** – The person to whom or corporate body to which a lease is assigned.

**Assignment** – An assignment of a lease is the transfer of the Lease to a third party who was not the original tenant. This is a complex area. Alienation or assignment provisions in leases will be restricted and will require formal consent from the Landlord. Assignment of part of the Lease (so simply transfer the Lease for part only of the property) is usually not permitted by the landlord. A lease may contain the requirement that the outgoing tenant provide an authorised guarantee agreement.

**Authorised Guarantee Agreements** – Authorised guarantee agreements were introduced by the Landlord and Tenant (Covenants) Act 1995 and generally apply to those leases entered into on or after 1st January 1996. On the assignment of a lease the outgoing tenant is released from the tenant covenants in the lease once the assignment has been completed. This poses problems for a landlord as the tenant could assign the lease to an unscrupulous tenant who cannot pay the rent. Most commercial leases now contain a tenant covenant which requires the tenant to provide an authorised guarantee agreement when the lease is assigned. Under the authorised guarantee agreement an outgoing tenant will act as guarantor for the incoming tenant. If the incoming tenant does not pay the rent or other sums due under the lease or comply with the tenant covenants generally then the landlord can require the outgoing tenant to do so. In addition if the incoming tenant becomes insolvent then the landlord can require the outgoing tenant to take a new Lease of the property for a term equal to that remaining under the lease.

**Break Clause** – A break clause is also sometimes referred to as a break option. It is a clause which enables the landlord or the tenant, but more commonly the tenant, to

end the lease before its expiry date. Break clauses usually contain very specific conditions which need to be complied with or fulfilled before the lease terminates. It is important that tenants ensure they comply with these conditions as any failure to do so may mean that the tenant cannot terminate the lease early.

**Break Notice** – When exercising a break clause or option the tenant generally needs to serve a break notice. This is the formal notification from either the landlord or the tenant that they want to end the lease. Some leases contain the wording that needs to be contained in the break notice but some do not. Most leases list what the break notice must contain and so it is important the landlord or the tenant comply with any such requirements.

**Business rates** - This refers to the tax payable on commercial property, and is assessed in a rating list. Registered charities may be eligible for mandatory rates relief and many voluntary organisations will be able to apply for discretionary rate relief. Further details are available via the Council's website

<https://www.bedford.gov.uk/business/business-rates/charitable-rate-relief/>.

**Change of Use** – Most leases will contain a permitted use (see below). Use clauses relate to the ability of a tenant to change the way land or buildings are used, either as a result of internal or structural alterations or renovation or the business which occupies the property. It can also apply if there is a significant increase in the present use or through a series of subtle alterations which could then be perceived as development. Changes of use may require planning permission and normally require a landlord's written consent. In respect of planning permission, not every change requires planning permission if the change is still within the same '[Use Class](#)'. It may, however, still require the landlord's written consent.

**Community Asset Transfer** – (as defined by [Locality](#)) "Community assets are land or buildings that have current or future potential use for community value. They can be brought into community ownership through a number of routes, and can involve different organisational structures and terms of ownership."

**Covenant** – In simple terms covenant is an agreement or promise. In terms of a lease, it refers to the obligations of both tenant and landlord. Covenants can be either positive or restrictive (see below)

**Demised Premises** – The term "demised premises" refers to the property occupied by a tenant, under the lease contract.

**Dilapidations** – This mainly concerns the tenant's failure to observe certain express and implied obligations within the lease, principally concerning the tenant's failure to observe obligations relating to repair of the premises. If the tenant has failed to comply with its repairing obligations then the repairs that are required are said to be dilapidations. Claims for dilapidations can be raised during the course of a lease (as are usually contained in an interim schedule of dilapidations) but are more commonly raised at the end (and so are usually contained in a terminal schedule of dilapidations).

**Equalities Act 2010** – The Equality Act 2010 legally protects people from discrimination. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations.

**Expression of Interest** – Is a written proposal made from an organisation who is interested in taking over a community asset

**Forfeiture** – If the tenant fails to pay the rent for a certain number of days or becomes insolvent or breaches other covenants in the lease, the landlord has the right to forfeit. In simple terms, this means they may be able to terminate the lease and end the agreement; however, this must be done in compliance with section 146(1) of the Law of Property Act 1925.

**Full Repairing and Insuring** – Many leases are said to be full repairing and insuring or FRI. This means that the tenant will be responsible for all repairs to the property (both internally and externally) and also to refund to the landlord the cost of insuring the building.

**Heads of Terms** – The principal purpose of heads of terms is to identify and define briefly what terms the landlord and tenant have agreed. Heads of terms are non-binding, but they do ensure that both parties understand what they have agreed before the legal agreements are drafted.

**Internal Repairing Lease** - This applies to a lease which is not a full repairing lease (see above). Instead of being responsible for the repair of the entire property, the tenant only has to repair the internal areas of the property e.g. carpets and paint work. Generally the landlord will be responsible for maintaining the structural external parts but this is not always the case.

**Landlord and Tenant Act** – The Landlord and Tenant Act 1954 (the Act) is split into 2 parts. Part I deals with residential tenancies and Part II covers business tenancies. Part II of the Act gives business tenants a degree of security with regard to their tenancy. It provides that a qualifying business tenancy will not automatically come to end upon the expiry of the fixed term of a lease provided the tenant remains in occupation for the purposes of a business. Assuming the tenancy is not brought to an end by agreement between the parties (i.e. surrender) or forfeiture (see below), the tenancy will only come to an end if it is terminated in one of the limited ways specified by the Act. The majority of leases granted under the Council's Community Asset Transfer Policy will be excluded from the protection afforded by of the Act.

**Landlord's consent** - If the tenant wishes to make certain changes to the property or its use, the lease will require landlord's prior consent to be obtained, which means formal permission (usually written). Landlord's consent will also be required before an assignment of the lease.

**Lessee** – The tenant

**Lessor** – The landlord i.e. the Council

**Licence** – There are various forms of licence. It is legal permission to do something. Common examples in respect of leases are a licence to alter (so permission to carry out alterations to the premises) or licence to assign (permission to assign the lease to a particular assignee). An alternative example is consent to carry out a business activity that may have been previously prohibited from premises. For example, permission for the selling of alcohol from a business premises is known as a premises licence.

**Localism Act 2011** – An Act of Parliament passed to facilitate the devolution of decision making powers from central government control to individuals and communities

**Mediation** – Mediation is the preferred way of resolving disputes these days, and seeks to avoid cases being taken to court. It involves an independent mediator, who attempts to resolve the situation between both tenant and landlord.

**Notice to Quit** – Notice by the landlord to the tenant to vacate the property which can only be used in certain circumstances.

**Permitted Use** – Most leases contain a use or permitted use clause. This clause will restrict what the property may be used for. It is important tenants consider such clauses carefully.

**Positive Covenant** – An obligation on the landlord or tenant to do something e.g. repair.

**Restrictive Covenant** – A clause that imposes a restriction on the landlord or tenant i.e. they must not do something. Common examples of a restrictive covenant are not to use land for a certain purpose or not to erect a building on the land to enable the value and use to be preserved.

**Rent Review** – Allows the landlord to review the rental rate on a periodic basis e.g. every three or five years. Normally it will be reviewed to the current market rent of the property or in line with the Retail Price Index.

**Schedule of Condition** – A record of the condition of the Demised Premises at the start of a lease. This is often attached to the lease and referred to in clauses relating to the state of repair and condition of the building and are particularly important in relation to assessing the state of the building when it is handed back to the landlord and in particular if this has deteriorated.

**Schedule of Dilapidations** – A list of repairs and maintenance required by the landlord. This schedule is prepared with reference to the tenant's repair covenants contained in the lease. It is often issued by the landlord at the end of the lease (terminal schedule of dilapidations) where the tenant is required to carry out works or pay compensation or during the term of the lease (interim schedule of dilapidations) where the landlord requires repairs to be carried out.

**Section 25 Notice** – A Section 25 Notice is prepared by the Landlord and served on the tenant where the tenant has security of tenure. It is served towards the end of a tenancy or after a tenancy has expired and is used to inform the tenant whether or not the landlord agrees to the grant of a new lease. If the landlord agrees to a new lease the notice will set out in brief the landlord's proposed terms for the new lease. If the landlord does not agree to a new lease then the notice must state the reason why (refer to Landlord and Tenant Act 1954).

**Section 26 Notice** – A Section 26 Notice is prepared by the tenant and served on the landlord where the tenant has security of tenure. It should be served before the end of a tenancy and is used to inform the landlord that the tenant requires a new lease for the property.

**Security of Tenure** – Is provided by the Landlord and Tenant Act 1954 and the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. For tenants to have a right to remain in occupation after their lease has come to an end the security of tenure provisions in Part II of the Landlord and Tenants Act 1954 must not have been excluded when the lease was granted. If the security of tenure is excluded from the lease at the outset the tenant has no right to remain in the property. If exclusion of the Act is not made and security of tenure exists the landlord can only seek to remove the tenant at the lease end date by serving a Section 25 Notice and in that notice demonstrating certain limited circumstances.

**Service charge** – Where parts of a building are shared or where it is situated on an estate with shared areas it is common to have a service charge in place, which the tenant must pay. This is to cover the costs of services provided by the landlord; such as maintenance and repair of the building, plus management costs.

**Service Level Agreement** – Is an agreement between the organisation and the Council that defines the outcomes expected. It is additional to the lease and is a form of service level agreement that deals with operational issues which a lease, as a document limited to the relationship between landlord and tenant, would not address.

**Surrender** – An agreement between the landlord and the tenant that the lease will end before the term end date defined in the lease.

**Tenant's Improvements** – Improvements that a tenant can legally make (at their own cost), without seeking permission from the landlord.

**Term** – The length of time the lease will be in place or run for.

**TUPE** - When a business changes owner, its employees may be protected under the Transfer of Undertakings (Protection of Employment) regulations (TUPE).

<https://www.gov.uk/transfers-takeovers>