

Life in Difficult Times – (for existing tenants)

This is the second of two articles looking at what commercial tenants can do, in the current difficult trading conditions, with some retail property agents saying that conditions recently have been amongst the most challenging of the last 25 years. That article considered options for tenants taking on a new commercial property. This second article is for existing tenants.

What are the options for existing tenants, when times are hard?

Get a brief professional review of existing Leases:

- When does the lease expire?
- Is there a break options, allowing the tenant to terminate the lease?
- If there is a break option, what is the notice period?

If the expiry date (or the date to give notice) is close, then, even if the tenant wants to stay on, the tenant may use the approaching termination or break date as a lever to negotiate the rent downwards.

Will the landlord agree to such a change? Commercial rents for properties on the market now are generally lower than before - the landlord might be concerned that the termination of the lease would leave the landlord with the expense of reletting the property and the risk of suffering a period with no rental income.

If no lease expiry date or break date is imminent, the outlook is trickier. The rent may now be higher than is justified by market conditions but landlords are unlikely to agree to reduce rents, except where they have no realistic option but to do so.

For some tenants, if trading proves to be too hard, administration or receivership takes matters out of their hands. Administrators and receivers don't have to take over existing leases. They may simply close the business, make the employees redundant and hand the keys back to the landlords (who may already have a significant rent arrears problem). The landlords may receive nothing to cover outstanding repairs and other obligations and will be left to re-let the property in a bad market. To compound the landlords' sense of injustice, the landlords may be faced with a management buy-

out of the assets of the business (the debts and any unfavourable contracts, including the lease, being left with the old company). The landlords must then choose whether to negotiate a less advantageous deal with the “new” owners of the new tenant company, or to take a chance on re-letting the property to someone else.

Going into administration is pretty drastic and not a voluntary “option”. What else can existing tenants do?

- a. **Will the Landlord agree to voluntary changes?** A landlord may be willing to agree to concessions if the alternative would be the insolvency of the tenant.
- b. **Monthly rent payments** – landlords may accept lease changes which don’t significantly affect them. Change from payment of rent quarterly in advance to payment monthly in advance may not have a major impact on the landlords but such a change could help the tenants’ cashflow.
- c. **Lease surrender** – tenants can approach their landlords to see if the landlords will take the property back for re-letting. Generally, leases don’t require landlords to take a property back at any time other than at the end of the lease. Realistically, a landlord is unlikely to take a Lease back voluntarily, unless the landlord can see a likelihood of achieving some benefit which outweighs the risk of losing rental income. However, an approach may succeed if it coincides with other circumstances such as:-
 - the lease having only a short period to run;
 - there being a known demand for a particular property;
 - the landlord having other interests (such as a wish to sell with vacant possession).
- d. **Assignment** (transferring the tenancy) - finding an alternative tenant to take over a lease can be difficult. Some property agents report a slightly improving picture but conditions are still difficult. Today’s rents are lower than those fixed two or three years ago and anyone trying to find a new tenant to take over a lease may face competition from other landlords offering properties for let at lower rents and with the benefit of incentives, such as rent-free periods. An assignee (incoming tenant) may have to be offered a payment to compensate for these disadvantages. Still, if a lease has only a fairly short period to run (2 years or so), then, if the assignee agrees to make that period

longer, the landlord may be willing to make concessions on rental levels or on other lease terms.

- e. **Property Sharing** – Rent and other lease costs can be reduced if occupation is shared. Many existing leases prohibit such arrangements. However, landlords may now be willing to be more flexible than they might have been in the past.
- Is the property readily divisible (enabling a part of it to be separately occupied)? If so, the property could generate some income, through a partial sub-letting arrangement.
 - If full separation is not possible, might some less formal sharing of occupation be possible? Could the tenant introduce a concession-type arrangement, where a compatible business has the use of an area of floor space? Such an arrangement may suit someone starting a new business, who does not want to take on the commitment of a fully-fledged lease (and, therefore, prefers a flexible arrangement with an existing tenant). It might also appeal to an existing tenant running a business from a property where the lease is ending, who needs a degree of business continuity but does not wish to take on the full commitment of a new lease.

Conclusion

Times are difficult, but possibilities exist for tenants and landlords to work towards safeguarding their interests. The best chance to make the most of the opportunities is to take sound advice from skilled negotiators.

If any member of our team can help, please contact, by phone or email

- David Jennings (0131 240 0701 – dj@bonarmac.co.uk)
- Gary Thomas (0131 240 0711 – ggt@bonarmac.co.uk)
- Claire Cowell (0131 240 0710 – cc@bonarmac.co.uk).