

## Life in Difficult Times – new commercial leases

So, possibly, the worst may be behind us! Economists and property experts are beginning to hope so.

We've been trading from Hill Street in Edinburgh for over 150 years. For 20 of those, I've had one (unscientific) barometer of the economic climate – how many properties are for sale or let in Hill Street? It's a relatively short street - at the date of this article, there are seven – the highest number in recent years; we're not out of the woods yet!

One street isn't statistically significant – what do the selling and letting agents say? Some retail property agents say that conditions recently have been amongst the most challenging of the last 25 years.

Undeniably, businesses are, on the whole, experiencing more difficult times now than they were two or three years ago, before the recession began.

### So what are the options for tenants, when times are hard?

The answer differs for (a) tenants looking for new properties (b) existing tenants. This first Article deals with the first of these categories.

Such tenants are in demand! Their negotiating position is as strong or stronger than it has been at any time for the last 10 years. Skilfully handled, that can produce tangible results for those taking leases of new properties, in both financial and legal terms:-

#### Financial Terms

- **Rents** – generally, rents are lower now than they were than they were in 2008
- **Rent-free periods** – Landlords want to have “headline rents” at as high a level as they can achieve because that keeps up the value of their properties. (A “headline rent” is the rent payable once an initial rent-free or reduced rent period has ended). A long rent-free period has the effect of pushing up the rent payable from the end of that period. It helps landlords (in their dealings with banks and prospective purchasers) if they can keep values up by keeping headline rents high, even if they have to offer incentives to achieve lettings at that level of rent. Initial rent-free periods are an obvious way of achieving that and, sometimes, good rent-free periods can be negotiated.

- **Work carried out by the landlord without expense to the tenant** – tenants may be able to have landlords agree to carry out improvements before the lease begins.
- **Legal expenses** – whereas, in the past, landlords routinely expected tenants to meet landlords’ legal expenses in connection with leases, that’s not the case now.

## Legal Terms

- **Duration** – instead of 15-20 year leases of a full repairing type, demanded by landlords a few years ago, shorter more flexible leases may now be available – perhaps for five years, with the tenant having the option to extend the lease period for a further five years after that.
- **Break options** – it can be a real advantage to a tenant, in times of financial uncertainty, to have a “way out” – an option to terminate the lease after a set period of time.
- **Repairs obligations** – In the past, “full repairing” leases meant that landlords passed on to their tenants the entire responsibility for repairing, and sometimes improving, properties. Now, successful negotiation on a tenant’s behalf can ensure that a landlord can never expect a tenant to make the condition of a property better than it was at the start. It may be possible to secure a cap on the tenant’s contribution towards costs of shared repairs or an exclusion of certain major repairs from the tenant’s responsibilities.

## Conclusion

Difficult times create not only problems but also opportunities. The best way to minimise those problems and to capitalise on those opportunities is to take sound advice from skilled negotiators.

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