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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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