

DOUG STEVENS SEMINAR

MONDAY 15TH APRIL 2019

08.00HRS TO 09.00HRS

VENUE : **CBRE**

`C-BAR`

Henrietta House

Henrietta Place

W1G 0NB

SUBJECTS

Pre-Pack Administrations & CVA`s - AGA`s - Vacant possession & Break Clauses-
Licences & Leases - Contracting Out of L & T Act 54 -50 Mins

Open Question Time 10 Mins

NEXT SEMINAR 20th MAY 2019

1. *Previous SEMINARS* www.douglasstevens.co.uk SEMINARS

WHAT HAPPENED TO DEBENHAMS LAST WEEK?

▶ A. THEY ARRANGED A PRE-PACK ADMINISTRATION

▶ Q. WHAT IS A PRE- PACK ADMINISTRATION?

▶ A PRE-PACK ADMINISTRATION IS AN INSOLVENCY PROCEDURE IN WHICH A COMPANY ARRANGES A PRE-NEGOTIATED SALE OF ITS ASSETS TO A NEWLY FORMED COMPANY AND THEN APPOINTS AN ADMINISTRATOR..

▶ THE ADMINISTRATOR MUST BE A LICENSED INSOLVENCY PRACTITIONER (IP).

▶ THE PRE-PACK PROTECTS THE LIMITED COMPANY FROM ACTION BY CREDITORS. THE OLD COMPANY CAN THEN BE SOLD TO A THIRD PARTY OR A PHOENIX COMPANY. PRE-PACK IS THE PRE-PACKAGED SALE OF THE COMPANIES ASSETS AND TRADE.

▶ A NEW COMPANY IS FORMED AND THE OLD COMPANY IS TRANSFERRED TO THE NEW COMPANY. THE OLD COMPANY IS THEN PUT INTO ADMINISTRATION. IT IS OFTEN THE DIRECTORS OF THE 'OLDCO' WHO FORM THE 'NEWCO'.

▶ PREVIOUS PRE-PACKS - BARBEOA STEAK HOUSES JACQUES VERT, JOY, AND JONES THE BOOTMAKER;

▶ **79%** OF PRE-PACK SALES WERE TO PARTIES CONNECTED WITH THE INSOLVENT COMPANY (SOURCE 2011 SURVEY)

▶ A REVISED SIP 16 (STATEMENT OF INSOLVENCY PRACTICE) WAS INTRODUCED BY GOVERNMENT IN NOVEMBER 2015 TO GOVERN INSOLVENCY PRACTITIONERS IN PRE-PACK CASES. IT WAS DESIGNED TO MAKE THE PROCESS MORE TRANSPARENT FOR CREDITORS AND TO ENSURE THAT FAIR VALUE WAS OBTAINED FOR THE ASSETS AS PRE-PACKS WERE SEEN TO BE UNFAIR.

▶ SIP16 THIS IS WHAT SHOULD HAPPEN <https://www.insolvency-practitioners.org.uk/download/documents/1318>

▶ **BUT** - ADMINISTRATORS UNDERTOOK SOME MARKETING IN ONLY **51% OF CASES (2011 SURVEY)**

IN THE DEBENHAMS PRE-PACK THE COMPANY AND ASSETS & DEBTS WERE SOLD TO ITS LENDORS (Barclays - Bank of Ireland + Silver Point & GoldenTree hedge funds)

- ▶ THEN AN ADMINISTRATOR WAS IMMEDIATELY APPOINTED
- ▶ FTI CONSULTING - HANDLED THE PRE-PACK ADMINISTRATION
- ▶ THE PRE-PACK DEAL GAVE DEBT LADEN DEBENHAMS ACCESS TO A PRE-AGREED £200 MILLION OF NEW FUNDING FROM ITS LENDERS.
- ▶ THIS PROCESS ENSURES THAT THE LENDORS ARE SECURED CREDITORS IN THE ADMINISTRATION (see below re-CVA)
- ▶ THIS PROCESS COMPLETELY EXCLUDED THE COMPANY EXISTING SHAREHOLDERS WHO LOST THE VALUE OF THEIR SHAREHOLDING
- ▶ THE 165 UK DEBENHAMS STORES IN BRITAIN WILL TRADE UNTIL POST-XMAS
- ▶ THEY WILL THEN SHUT c.50 SHOPS
- ▶ THEN ENTER IN TO A COMPANY VOLUNTARY ARRANGEMENT (CVA)
- ▶ Q. HOW DOES A CVA (Company Voluntary Administration) DIFFER FROM A PRE-PACK administration?

COMPANY VOLUNTARY ARRANGEMENT (CVA)

▶ A. IN A CVA THE COMPANY IS NOT SOLD AT POINT OF ADMINISTRATION

▶ Q. WHAT IS A CVA?

▶ A. If your limited company is insolvent, it can use a Company Voluntary Arrangement (CVA) to pay creditors over a fixed period. If creditors agree, your limited company can continue trading. Creditors include suppliers and landlords.

▶ Q. HOW IS IT POSSIBLE?

▶ A. INSOLVENCY ACT 1986 This Act introduced CVA`s. It was intended to be a positive option to help companies in financial trouble. It was moderately used in the early years – featured quite strongly post-credit crunch from 2008 - but is now is almost a default position for companies who are under-performing. A commonly held view is that it`s provisions are now being abused. Also Insolvency Act 2000

▶ Q. HOW DOES IT WORK?

▶ A. A company or limited liability partnership (LLP) can apply for a CVA if **all** the directors or members agree. Using an insolvency practitioner the company prepares a plan to pay unsecured creditors less than they are actually owed. The creditors are given the opportunity to vote on the proposed terms

▶ Q. WHAT NUMBER OF VOTES ARE REQUIRED FOR THE CVA TO BE CARRIED?

▶ A. 75% of unsecured creditors

CVA'S CONTINUED

- ▶ Q. WHY CAN'T LANDLORDS VOTE IT DOWN?
- ▶ THEY DON'T WANT TO ACCEPT A 30% (OR MORE) REDUCTION IN RENT AND IF STORE CLOSURE IS PROPOSED PROBABLY DON'T WANT THE LEASE BACK
- ▶ A. THE PRINCIPAL CREDITORS FOR A RETAIL COMPANY ARE (INVARIABLY) OVERWHELMINGLY THE SUPPLIERS.
- ▶ IN ROUGH TERMS THE SUPPLIERS MIGHT ACCOUNT FOR 90% OF THE CREDITORS
- ▶ – SO - IN EFFECT THE LANDLORDS VOTE IS WORTH ONLY 10%.
- ▶ THE SUPPLIERS ARE HAPPY (*SIC*) TO GET PART OF THEIR MONEY BACK AND CONTINUE SUPPLYING.
- ▶ HENCE IN THE RECENT CVA VOTES THE PASS RATE WAS CARPETRIGHT 98% - NEW LOOK 98% - TOYS R US 98% - JAMIE OLIVER 95%
- ▶ THE PRINCIPLE OF CVA'S AS PROVIDED FOR IN INSOLVENCY ACT 1986 WAS TO ENSURE THAT ALL CREDITORS ARE TREATED THE SAME.
- ▶ AS CURRENTLY OPERATED CVA's ARGUABLY TREAT LANDLORDS UNFAIRLY.

Q. YOU ACT FOR THE ASSIGNOR OF PREMISES WHO TOOK ON A LEASE 20 YEARS AGO IN 1999. THEY ASSIGNED THE LEASE TO ANOTHER PARTY (THE ASSIGNEE) IF THE ASSIGNEE GOES BUST WILL YOUR CLIENT BE LIABLE FOR RENT ETC?

▶ A. YES YOUR CLIENT WHEN ASSIGNING THE LEASE WILL HAVE SIGNED AN AGA AUTHORISED GUARANTEE AGREEMENT

▶ Q. UNDER WHAT ACT WAS IT INTRODUCED?

▶ A. LANDLORD & TENANT COVENANTS ACT 1995

▶ ALL LEASES WITHIN THE L & T Act 1954 MUST NOW PROVIDE FOR AGA's

▶ BY ENTERING IN TO AN AGA THE ASSIGNOR (OUTGOING TENANT) EFFECTIVELY GUARANTEES THAT THE ASSIGNEE (INCOMING TENANT) WILL PAY THE RENT, ETC BUT ONCE THAT TENANT ASSIGNS THE LEASE TO ANOTHER PARTY THE ORIGINAL ASSIGNOR HAS NO FURTHER LIABILITY.

▶ AGA's SEEK TO STRIKE A BALANCE BETWEEN THE UNCERTAINTY OF LIABILITY OF A TENANT WHO ASSIGNS A LEASE

AND

THE PROTECTION OF THE LANDLORD IF THE TENANT ASSIGNS TO A PARTY WHO MIGHT NOT HAVE THE SAME COVENANT STRENGTH AS THE ASSIGNOR.

AUTHORISED GUARANTEE AGREEMENTS (AGAs)

- ▶ **NB There is no set form for an AGA, although the 1995 Act does set out what certain characteristics which an AGA must have and also certain characteristics which it cannot have. Each AGA may therefore have different conditions/qualifications.**

- ▶ Typical wording –

On or before any assignment and prior to allowing the proposed assignee into possession or occupation of the Premises the Tenant and any former tenant who by virtue of s11 of the 1995 Act was not released from liability on any previous assignment of this Lease shall enter into an authorised guarantee agreement for the purposes of s16 of the 1995 Act in favour of the Landlord by way of deed in the form of the draft agreement set out in the... schedule to this Lease.

- ▶ THE TENANT GUARANTEES TO THE LANDLORD THAT THE ASSIGNEE SHALL PAY THE RENTS RESERVED BY THE LEASE AND ANY INTERIM RENT DETERMINED UNDER THE LTA 1954 AND OBSERVE AND PERFORM THE TENANT COVENANTS OF THE LEASE AND THAT IF THE ASSIGNEE FAILS TO PAY ANY OF THOSE RENTS OR TO OBSERVE OR PERFORM ANY OF THOSE TENANT COVENANTS, THE TENANT SHALL PAY OR OBSERVE AND PERFORM THEM.

- ▶ THE TENANT COVENANTS WITH THE LANDLORD AS A SEPARATE AND INDEPENDENT PRIMARY OBLIGATION TO INDEMNIFY THE LANDLORD AGAINST ANY FAILURE BY THE ASSIGNEE EITHER:

- ▶ TO PAY ANY OF THE RENTS RESERVED BY THE LEASE AND ANY INTERIM RENT DETERMINED UNDER THE LTA 1954; OR

- ▶ TO OBSERVE OR PERFORM ANY OF THE TENANT COVENANTS OF THE LEASE.

VACANT POSSESSION (V/P)

▶ Q. WHEN IS VACANT POSSESSION REQUIRED?

- ▶ A. ON COMPLETION OF A SALE OR COMMENCEMENT OF A NEW LETTING
- ▶ AT THE BREAK DATE WHEN A LEASE HAS BEEN TERMINATED

▶ Q. WHEN IS VACANT POSSESSION ASSUMED?

- ▶ A. GENERALLY RENT REVIEW PROVISIONS ASSUME VACANT POSSESSION

▶ I.e., Although the Tenant is actually in occupation - it is assumed that property is vacant

- ▶ This is to give effect to the open market scenario also assumed at rent review

▶ Q. IS VACANT POSSESSION ASSUMED AT LEASE RENEWAL?

- ▶ A. 2 SCHOOLS OF THOUGHT

▶ MANY BELIEVE V/P MUST BE ASSUMED TO GIVE EFFECT TO OPEN MARKET ASSUMPTION

▶ SOME BELIEVE THAT YOU SHOULD ONLY IGNORE THE “EFFECT ON RENT OF THE TENANT IN OCCUPATION”

▶ S.34 L & T ACT 1954 - SAYS “*disregard any effect on rent of the fact that the tenant has been in occupation*”

▶ IT MAKES NO REFERENCE TO AN ASSUMPTION OF VACANT POSSESSION

VACANT POSSESSION & BREAK CLAUSES

- ▶ A BREAK CLAUSE WILL OFTEN STIPULATE CONDITIONS FOR THE OPERATION OF THE BREAK AND SUCH CONDITIONS MUST BE STRICTLY COMPLIED WITH. TENANT MUST GIVE VACANT POSSESSION
- ▶ **RIVERSIDE PARK LTD V NHS PROPERTY SERVICES LTD.**
- ▶ LANDLORD AND TENANT ENTERED INTO A LICENCE FOR ALTERATIONS PERMITTING THE TENANT TO CARRY OUT MINOR FIT OUT WORKS INCLUDING THE INSTALLATION OF PARTITIONS, KITCHEN UNITS, BLINDS ALARM
- ▶ TENANT HAD A BREAK CLAUSE IN LEASE & EXERCISED IT BUT TENANT WORKS HAD NOT REMOVED THESE ITEMS (RE-INSTATED) AT THE BREAK DATE.
- ▶ LANDLORD ARGUED THAT THE EXISTENCE OF THE WORKS MEANT THAT THE TENANT HAD FAILED TO GIVE VACANT POSSESSION AND ITS BREAK RIGHT WAS THEREFORE INEFFECTIVE.
- ▶ THE COURT HAD TO DECIDE IF THE TENANT'S WORKS WERE CHATTELS OR FIXTURES?
- ▶ IF THEY WERE TENANT'S FIXTURES, WAS THE TENANT OBLIGED TO REMOVE THEM TO GIVE VACANT POSSESSION?
- ▶ TENANT ARGUED THAT IT HAD NO OBLIGATION TO REMOVE THE WORKS BECAUSE THEY HAD BEEN INCORPORATED INTO THE DEFINITION OF THE PREMISES.
- ▶ THE COURT REJECTED THIS ARGUMENT AND DETERMINED THAT THE FIXTURES AND SPECIFICALLY THE TERM "PARTITIONING" WERE EXCLUDED FROM THE DEFINITION OF THE PREMISES UNDER THE LEASE.
- ▶ THE LICENCE FOR ALTERATIONS WAS ALSO SIGNIFICANT IN THIS CASE. THE TERMS OF THE LICENCE FOR ALTERATIONS REQUIRED THE TENANT TO REINSTATE THE PREMISES IF THE LICENCE CEASED TO HAVE EFFECT.
- ▶ THE COURT HELD THAT THE FOLLOWING CIRCUMSTANCES CONSTITUTED A MATERIAL BREACH OF THE TENANT'S COVENANTS UNDER THE LICENCE:-
- ▶ A) THE TENANT HAD NOT OBTAINED APPROVAL FROM INSURERS;
- ▶ B) THE TENANT HAD NOT GIVEN NOTICE TO THE LANDLORD OF THE COMPLETION AND COMMENCEMENT OF THE WORKS;
- ▶ C) THE TENANT FAILED TO OBTAIN THE LANDLORD'S APPROVAL OF THE CONTRACTORS FOR THE WORKS; AND D) THE TENANT FAILED TO COMPLY WITH THE SPECIFICATION FOR THE INSTALLATION OF THE PARTITIONING.
- ▶ THE TENANT'S MATERIAL BREACH MEANT THAT THE LICENCE CEASED TO HAVE EFFECT AND THUS THE TENANT WAS OBLIGED TO REMOVE THE WORKS.
- ▶ **HELD**
- ▶ THE TENANT DID NOT GIVE VACANT POSSESSION BY ITS BREAK DATE.
- ▶ THE TENANT'S NON-COMPLIANCE IN THIS CASE MEANT THAT IT WAS LIABLE TO CONTINUE PAYING RENT ON THE LEASE UNTIL THE END OF THE LEASE TERM.
- ▶ See also - **NYK Logistics (UK) Limited v Ibrend Estates BV**
- ▶ COURT OF APPEAL. THE TENANT, NYK, WAS CARRYING OUT REPAIRS TO THE PROPERTY RUNNING UP TO THE BREAK DATE AND ASKED THE LANDLORD FOR CONFIRMATION THAT THEY COULD REMAIN IN THE PROPERTY FOR A COUPLE OF WEEKS AFTER THE BREAK.
- ▶ THE LANDLORD DID NOT RESPOND TO THIS REQUEST, AND WHEN THE TENANT CAME TO HAND THE KEYS BACK AFTER THE BREAK DATE HAD PASSED THE LANDLORD CLAIMED THAT THE TENANT HAD FAILED TO COMPLY WITH A CONDITION OF THE BREAK WHICH WAS THAT THE TENANT MUST GIVE VACANT POSSESSION ON THE BREAK DATE ITSELF. NYK CLAIMED THEY WERE NOT IN OCCUPATION ON THE BREAK DATE, BUT WERE MERELY CARRYING OUT A FEW OUTSTANDING WORKS.

BREAK CLAUSES / OPTIONS TO DETERMINE

- ▶ WHAT IS A BREAK CLAUSE AND WHEN IS IT USED?
- ▶ CLAUSE ENABLING PARTY TO TERMINATE A LEASE ON SERVING NOTICE TO BREAK
- ▶ WHAT EXAMPLES CAN YOU THINK OF WHERE LEASES HAVE BREAK CLAUSES?
- ▶ 10 YEAR LEASE WITH TENANT ONLY BREAK OPTION TO TERMINATE THE LEASE AT THE 5TH YEAR ON GIVING 6 MONTHS NOTICE
- ▶ CAN A LANDLORD ALSO HAVE A BREAK CLAUSE IN A LEASE?
- ▶ YES IF THE LEASE IS CONTRACTED OUT OF L & T ACT 1954 - MUTUAL BREAKS ARE COMMON
- ▶ NO IF LEASE IS INSIDE THE ACT - BUT CAN HAVE A RE-DEVELOPMENT BREAK CLAUSE
- ▶ WHERE A DATE IS SPECIFIED FOR A BREAK NOTICE IT MUST BE SERVED BY THAT DATE - IF NOTICE IS LATE THE BREAK CLAUSE IS MISSED. SURPRISINGLY FREQUENT FAILURE TO SERVE NOTICE ON TIME
- ▶ IS IT SIMPLY A MATTER OF SERVING NOTICE ON TIME?
- ▶ NO EVERY QUALIFYING CONDITION IS TO BE MET, IE, PAYMENT OF RENT, SERVICE CHARGE INSURANCE, REPAIR, VACANT POSSESSION - PENALTY PAYMENT (if there is one)

CASE LAW

- ▶ 'HOTGROUP V THE ROYAL BANK OF SCOTLAND (2010)'. BREAK NOTICE WAS SERVED ON TIME BUT A COPY NOTICE TO BE SERVED ON THE PROPERTY MANAGER WAS LATE SO THE BREAK WAS NOT EFFECTIVE.
- ▶ 'OSBORNE V BRITANNIA LIFE (1997)', T TO PAINT 2 X COATS - FOUND TO HAVE APPLIED SINGLE COAT OF PAINT - ENOUGH TO INVALIDATE THE BREAK.
- ▶ RECENT CASE MARKS & SPENCER PLC V BNP PARIBAS SECURITIES SERVICES TRUST CO (JERSEY) LTD [2014] HELD THAT L/L CAN KEEP OVERPAYMENT OF RENT

EXAMPLE OF BREAK CLAUSE / OPTION TO DETERMINE

Tenant's Option to Determine

- ▶ “Termination Date” means any time on or after 31st March 2020,
- ▶ **** THIS EXAMPLE IS A ROLLING BREAK FROM A CERTAIN DATE WITH NO PENALTY PAYMENT ****
- ▶ Subject to the pre-conditions being satisfied on the relevant Termination Date, the Tenant may determine the Term on the Termination Date by **giving the Landlord not less than 6 month's written notice**.
- ▶ The Term will then determine on the relevant Termination Date, but without prejudice to any rights of either party against the other for any antecedent breach of its obligations under this Lease or any failure to yield up the Premises with vacant possession.
- ▶ The pre-conditions are that:
 - ▶ the Premises are yielded up free from rights of occupation and any subleases to the Landlord; and
 - ▶ all Principal Rent and VAT payable on it which has fallen due under this Lease and demanded 28 days in advance of the relevant Termination Date have been paid in full
- ▶ The Landlord may waive any of the pre-conditions at any time before the relevant Termination Date by written notice to the Tenant.
- ▶ Following termination of this Lease :
 - ▶ the Landlord shall repay to the Tenant any advance payment of the Principal Rent made by the Tenant in respect of the period from but excluding the Termination Date within 10 business days of the Termination Date;
- ▶ **** IF THERE IS A PENALTY PAYMENT ie, 6 MONTHS RENT - THIS MUST BE PAID ON THE DUE DATE ****

Time will be of the essence for the purposes of this clause

Break clauses / Options to determine

- ▶ BREAK CLAUSE - DOES EITHER L/L OR T HAVE A RIGHT (OPTION) TO DETERMINE THE LEASE BEFORE THE CONTRACTUAL EXPIRY DATE?
- ▶ IF BOTH PARTIES HAVE RIGHT TO BREAK THE LEASE (A MUTUAL BREAK) THE LEASE MUST BE CONTRACTED OUT OF L & T ACT.
- ▶ CAREFULLY RECORD -:
- ▶ THE DATE FOR SERVICE OF BREAK NOTICE
- ▶ THE DATE IS TAKES EFFECT, IE, DATE IT TERMINATES THE LEASE
- ▶ Is there a. ROLLING BREAK?
- ▶ Is there A PENALTY PAYMENT?
- ▶ **NB TIME IS OF THE ESSENCE IN RELATION TO BREAK NOTICES**
- ▶ THE PRESENCE OF A BREAK CLAUSE DOES IMPACT ON VALUE BECAUSE A SHORTER LEASE TERM MAY BE ASSUMED IF BREAK EXERCISED ie, A VALUER WILL ASSUME BREAK IS EXERCISED
- ▶ BUT - IF THERE IS A PENALTY PAYMENT THE VALUATION IMPACT IS PARTIALLY MITIGATED
- ▶ RE-DEVELOPMENT BREAK CLAUSE - HAS THE L/L RESERVED THE RIGHT TO TERMINATE THE LEASE FOR A RE-DEVELOPMENT? IF SO RECORD THE DATE (S) AND NOTICE PERIODS

Q. WHAT IS THE DIFFERENCE BETWEEN A LICENCE AND A LEASE?

- ▶ A. A licence is a document granting a permission to occupy or do something on another party's property.
- ▶ A lease is the grant of a legal interest in land or property which gives exclusive possession for a specified period of time.
- ▶ A lease may give security of tenure to a business tenant whereas a licence is not intended to.
- ▶ However **even if an agreement purports to call itself a 'licence', it does not mean that it will actually be a licence** - it will very much depend on how the agreement/licence is worded.
- ▶ The key factors are:-
 - ▶ **If** the business/party occupies property or land owned by another party:
 - ▶ •for a **fixed term**
 - ▶ and
 - ▶ •**exclusively**
 - ▶ then notwithstanding the name on the document for occupation (lease or licence),

it will be classified as a lease not a licence.

LEASE & LICENCE

- ▶ A lease is an estate in land and can therefore be bought and sold.
- ▶ If it is a lease within Landlord and Tenant Act 1954 (Part 2) Business premises the tenant has security of tenure - ie, right to renew lease and to compensation.
- ▶ A licence is a personal contractual permission to occupy property or land.
- ▶ A licence does not give exclusivity or right to sell or right to renew

SEE CASE LAW:-

Camelot Property Management Limited v Roynon [2017]

- ▶ Camelot acting as a landlord put an individual Mr Roynon in an empty care home on a licence to keep it secure - with keys to 2 rooms BUT without reserving Camelot`s right to access those rooms.
- ▶ When they served notice on him to quit he refused to do so
- ▶ HELD The court decided Mr Roynon had exclusive possession and he ended up with an assured shorthold tenancy (AST).
- ▶ **DANGER GRANTING LICENCES LONGER THAN 6 MONTHS or RENEWING ONE THAT`s EXPIRED**
- ▶ **DANGER GRANTING EXCLUSIVE OCCUPATION**

Q. WHAT IS SECURITY OF TENURE?

▶ A. SECURITY OF TENURE MEANS THAT WHEN A LEASE EXPIRES, THE LEASE DOES NOT COME TO AN END BUT CONTINUES BY OPERATION OF THE LAW UNTIL TERMINATED BY L/L OR T.

▶ IT IS THE RIGHT OF A TENANT HOLDING A LEASE WITHIN THE L & T ACT 1954 TO RENEW THEIR LEASE SUBJECT TO THE L/L'S OBJECTION ON ANY GROUNDS UNDER S.30

▶ Q. CAN A NEW LEASE BE GRANTED WITHOUT SECURITY OF TENURE?

▶ A. YES IT IS BECOMING MORE COMMONPLACE - IT SUITS L/L'S AS IT GIVES THEM GREATER CONTROL

▶ Q. HOW DO THE PARTIES TO A LEASE 'CONTRACT OUT' OF THE L & T ACT 1954?

▶ A. HISTORICALLY A JOINT APPLICATION TO THE COURT WAS REQUIRED. NOW THE L/L PREPARES AND THE T SIGNS (BEFORE AN INDEPENDENT SOLICITOR) A STATUTORY DECLARATION

▶ The tenant is required to: (1) accept and read a 'warning notice' from the landlord setting out that tenant will not have the right to renew the lease, under statute, at the end of its term; and (2) swear a statutory declaration at an independent firm of solicitors confirming that you are aware of the rights you are giving up.

▶ OR

▶ A SIMPLE DECLARATION IF OVER 14 DAYS NOTICE AS YOU ARE ALLOWING A MINIMUM TWO WEEKS FOR THE TENANTS TO MAKE A REASONED DECISION

▶ THIS SPELLS OUT IN VERY CLEAR TERMS THAT THE TENANT WILL HAVE NO RIGHTS TO A NEW LEASE UPON THE EXPIRY OF THE LEASE.

Q. WHAT HAPPENS IF A T STAYS IN OCCUPATION AFTER EXPIRY OF CONTRACTED OUT LEASE?

- ▶ A. T HAS NO RIGHT OF OCCUPATION
- ▶ L/L CAN CHOOSE TO CHANGE THE LOCKS AND TAKE V/P
- ▶ - OR -
- ▶ GRANT THE TENANT A TENANCY AT WILL
- ▶ A **tenancy at will** occurs when a landlord and a tenant agree that a tenant will be allowed to occupy a property before a **lease** has been issued
- ▶ This right of termination and ability for either party to bring the **agreement** to an end at any time is the most important feature of a **tenancy at will**.
- ▶ A **TENANCY AT WILL** IS USED BY A L/L WHO WANTS TO AVOID A TENANT FROM GETTING SECURITY OF TENURE.
- ▶ IT IS A SHORT FORM OF LEASE INTENDED FOR A SHORT PERIOD OF OCCUPATION .
- ▶ IT DOES NOT HAVE ANY FIXED LENGTH AND IT IS NOT A TENANCY WITHIN THE LANDLORD AND TENANT ACT 1954,
- ▶ SO IT AVOIDS THE SECURITY OF TENURE RULES.

Q. YOU ARE LANDLORD OF A NEWLY DEVELOPED BLOCK OF 3 SHOP UNITS.

WOULD YOU LET THE UNITS INSIDE OR OUTSIDE THE LANDLORD & TENANT ACT 1954?

▶ A MOST LIKELY YOU LET ON A CONTRACTED OUT BASIS

▶ Q WHY

▶ A L/L CAN INSERT BREAK CLAUSES

▶ L/L CAN SECURE VACANT POSSESSION AT LEASE EXPIRY

▶ L/L CAN PUT IN A DIFFERENT TENANT

▶ AT RENEWAL DATE L/L CAN LET AT AN OPEN MARKET RENT & NOT HAVE TO PROVE THAT RENTAL LEVEL

▶ WHEN GRANTING A NEW LEASE L/L DOES NOT HAVE TO FOLLOW THE TERMS OF THE OLD LEASE

▶ L/L DOES NOT NEED TO GO TO COURT AND INCUR COURT /SOLICITORS COSTS AT RENEWAL

▶ L/L DOES NOT NEED TO PAY STATUTORY COMPENSATION TO OUTGOING TENANT

▶ IF L/L WANTS TO REDEVELOP AT LEASE EXPIRY HE DOES NOT HAVE TO PROVE GROUNDS