

SEMINAR FEB 16th 2017

- ❖ UNDERSTANDING LEASE CLAUSES
- ❖ OPEN QUESTION TIME

*SEMINAR BY DOUG STEVENS TO 1st & 2nd YEAR GRADUATES
DELIVERED AS A POWERPOINT PRESENTATION*

UNDERSTANDING LEASE CLAUSES

- ❖ EVERY LEASE IS DIFFERENT
- ❖ ATTEMPTS AT STANDARDISATION HAVE BEEN BY WAY OF A CODE - NOT OBLIGATORY
- ❖ LAW SOCIETY - BPF - BCO - RICS INPUT
- ❖ MODERN LEASES ATTEMPT TO MAKE CLEAR TO A TENANT THE FUNDAMENTAL CLAUSES - there is often a summary of clauses & definitions
- ❖ MORE DETAIL - GREATER LENGTH
- ❖ BUT STILL SIGNIFICANT VARIATIONS AS EACH LANDLORD/SOLICITOR HAS OWN WORDING
- ❖ IDENTIFY THE IMPORTANT CLAUSES AND ANY DIFFERENCES FROM THE NORM

2 MAIN REASONS TO UNDERSTAND LEASE CLAUSES VALUATION (Capital/Rental) - MANAGEMENT

- ▶ WE COVERED RENT REVIEW CLAUSES LAST MONTH - SO WE WILL FOCUS ON THE OTHER CLAUSES TODAY
- ▶ VALUATION - IDENTIFY THOSE CLAUSES WHICH WILL IMPACT ON RENTAL AND CAPITAL VALUE
- ▶ ----- DOES A CLAUSE ADD VALUE OR MIGHT IT CAUSE A LOSS IN VALUE OR IS IT NEUTRAL ie, market norm
- ▶ MANAGEMENT - A MORE DETAILED ANALYSIS OF EACH CLAUSE - WHAT DOES THE LEASE PERMIT OR RESTRICT ?
- ▶ EACH MAJOR CLAUSE WOULD WARRANT A SEPARATE SEMINAR - THERE IS CASE LAW ON EVERY CLAUSE IN A LEASE
- ❖ ? ARE THERE ANY OTHER DOCUMENTS, ie, AGREEMENT FOR LEASE - DEED OF VARIATION - LICENCE TO ASSIGN/UNDERLET - LICENCE FOR ALTERATION

MAKE A SUMMARY OF THE MAJOR CLAUSES

- ▶ **DATE OF LEASE** This may dictate the expiry date, rent review date.
- ▶ Is it pre-1st Jan 1996 (LANDLORD & TENANT COVENANTS ACT 1995)
- ▶ If older many clauses will be different to modern clauses
- ▶ **PARTIES** - are the landlord (L/L) & tenant (T) the same as the current L/L & T. Guarantors ?
- ▶ If not there has been a sale of the L/L interest and/or an assignment of T`s interest. Does the Licence to assign contain any variations to the lease ?
- ▶ **DEMISE** What has actually been demised in the lease - ie, all that property on basement ground and part first floor. Are there voided areas demised. At rent review is a different hypothetical demise to be valued. Compare actual demise with hypothetical demise.
- ▶ **RENT** - Rent stated in lease may now be different following a rent review (look at dates of lease and reviews) - fixed uplift (compound interest) or RPI or may be subject to capped uplifts. Is it a base rent (80%?) with turnover top-up.

Continued

- ▶ **TERM** – Commencement date (might not match lease date) and expiry date.
Long term – short term ?
- ▶ Reversionary lease
- ▶ **TENURE** – Is it a lease inside the Landlord & Tenant Act 1954 (L&T Act) ?
- ▶ This is not actually stated in the lease BUT if it is a lease outside the L&T Act it will say that S`s 24-28 of the L & T Act do not apply (contracted out), ie, upon expiry the T has no legal right to renew the lease.
- ▶ **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 and the date it takes effect, ie, date it terminates the lease. Rolling breaks ?
- ▶ **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.

REPAIRS

- ▶ **FRI** FULL REPAIRING AND INSURING
- ▶ **FRI (SERVICE CHARGE)** L/L recovers cost through service charge payments - L/L responsible for structure - T limited to internal (exterior sometimes)
- ▶ Note the basis of service charge - stated as a %age or calculated per sq ft gross, weighted or unweighted - or calculated by reference to rateable value
- ▶ **IRT** INTERNAL REPAIRING TERMS - addition to rental value (10%?)
- ▶ **SCHEDULE OF CONDITION** - written - photographic - keep in same condition
- ▶ **T COVENANTS TO REPAIR** - to keep in good and substantial repair/decoration - and condition. Held to mean repair and replacement but not giving back that which was not given. Many cases on repairs but few with direct impact on valuation - save for T covenant to rebuild (generally confined to long leases)
- ▶ **INHERENT/LATENT DEFECTS** These arise from a defect in design, construction or materials used and are generally excluded from T`s liability.

ALTERATIONS

- ▶ *TENANT ALTERATIONS/IMPROVEMENTS*
- ▶ *L/L WISHES TO MAINTAIN STRUCTURAL INTEGRITY AND APPEARANCE & VALUE OF HIS BUILDING. T WISHES TO ALTER TO SUIT HIS BUSINESS*
- ▶ *STRUCTURAL - Often not permitted. Possible discount of rental value.*
- ▶ *NON-STRUCTURAL – Generally permitted with LLCNTBUW (OD)*
- ▶ *NO ALTERATIONS – In listed buildings no alterations permitted*
- ▶ *REINSTATEMENT – return to original state at end of lease if required by L/L*

ALIENATION

- ▶ ASSIGNMENT - UNDERLETTING - SHARING POSSESSION
- ▶ **ASSIGNMENT** - WHOLE ONLY - OR - PROHIBITED - OR L/L PRE-EMPTION
- ▶ - WHOLE ONLY FOR L/L CONTROL
- ▶ - PROHIBITED - SHORT LEASE - ANCHOR TENANT- NEAR END
- ▶ - PRE-EMPTION L/L WANTS IT BACK
- ▶ **UNDERLETTING** - WHOLE ONLY - OR - IN PART OR PARTS - OR PROHIBITION
- ▶ **SHARING POSSESSION** - CONCESSIONS - LARGE STORES - %AGE ?
- ▶ IDENTIFY WHERE RESTRICTIVE ALIENATION WOULD IMPACT ON VALUATION
- ▶ **LLCNTBUW** -S.19 Landlord & Tenant Act 1927 - L/L deemed not to act unreasonably BUT - this will not over-ride specified qualifications/conditions
- ▶ Assignment - covenant - good estate management/tenant mix
- ▶ guarantor - rent deposit
- ▶ Underletting - market rent (not < passing rent) - lease on same terms -
- ▶ contracted out - guarantor - rent deposit

ALIENATION continued

- ▶ ASSIGNMENT - PRE-1996 (L & T Covenants Act 1995) PRIVITY OF CONTRACT
- ▶ - POST- 1996 AGA Authorised Guarantee Agreement
- ▶ Is a pre-AGA property more valuable ? Yes if original covenant stronger
- ▶ **PRE-EMPTION** - On receiving an application for assignment (or underletting)
- ▶ L/L reserves right to exercise a pre-emption to take the lease
- ▶ back (a surrender) at same premium as offered to T in market
- ▶ Does the existence of the pre-emption depress the rental value ? No.

USER

SPECIFIED USE ie, NOT TO USE OTHER THAN AS
PROHIBITED USE

- ▶ **OPEN USER** ie, LLCNTBUW (OD) WITHIN USE CLASS - OR SEVERAL USE CLASSES
- ▶ **QUALIFIED USER** - L/L CONSENT (NB S.19 L&T Act 1927 does not apply)
- ▶ **ABSOLUTE RESTRICTIVE USER** (10% DISCOUNT) - COMPETITION ACT 1998

- ▶ BUT - AGA TERMS MAY FURTHER RESTRICT WHAT USE IS ACCEPTABLE
- ▶ BUT - RENT REVIEW PROVISIONS MAY ASSUME NO USER RESTRICTIONS

OTHER CLAUSES

- ▶ INSURANCE - Redevelopment where building destroyed - rent cover
- ▶ PLANNING - T`s rights to make an application
- ▶ L/L DEVELOPMENT - What rights reserved in lease - can T object
- ▶ STATUTORY REQUIREMENTS - T to comply with all statutes
- ▶ FORFEITURE - L/L`s rights to take back following breach by T
- ▶ LANDLORDS COVENANTS - Quiet enjoyment, insurance,