



A meeting of the solicitors acting for Lending Institutions in Dublin has considered the effect of Section 2 of the Landlord and Tenant (Ground Rents) (No. 1) Bill 1977, having regard to the practice of leases of dwellinghouses on building estates being executed by all parties well in advance of the completion of the houses, and being held in escrow by the lessor's solicitors, usually to enable stamp duty on the lease to be assessed and impressed prior to completion.

It was the unanimous view of the solicitors present that such a lease even though dated prior to the date of coming into force of the Act would be void under the Act if it were held in escrow at the date of the passing of the Act and then delivered to the purchasers afterwards. The meeting further considered the difficulties which would face a Lending Institution's solicitor presented, shortly after the passing of the Act, with a lease dated prior to the date of passing of the Act, of deciding whether such a lease were void because it had been held in escrow or valid because it had been delivered prior to the passing of the Act. The view of the meeting was that a Lending Institution solicitor could not undertake the burden of making such a decision.

The meeting noted that the provisions of Section 2, Sub-section (4) of the Bill which protected the position of a purchaser of a leasehold interest deemed void under Section 2, Sub-section (1), did not extend to a mortgagee and accordingly agreed that the solicitors acting for Lending Institutions would not be able to accept leases of dwellinghouses after the date of coming into force of the Act even though the leases might have been dated prior to the passing of the Act. Following this meeting the Society made representations to the Department of Justice asking for amendments to be made to the Bill to protect the interests of purchasers under such leases but it is not anticipated that the required amendments will in fact be made in the Act.

Accordingly, solicitors acting for vendors or purchasers of new dwellinghouses or those in course of construction which it was intended should be let on leases should immediately make arrangements to avoid the use of such leases which will not be acceptable to Lending Institution solicitors after the passing of the Act.

## LEASES OF DWELLINGHOUSES 1978 (No.1) ACT



**PROOF OF  
COMPLIANCE WITH  
COVENANTS IN  
LEASE RESERVING  
NOMINAL GROUND  
RENT**

**S**ection 3(4) and (5) of the Conveyancing Act 1881 provides that production of the receipt for the last gale of ground rent shall be prima facie evidence of compliance by the lessee with the covenants and conditions in a lease.

A great many leases were created of new houses, which leases reserved nominal ground rents, particularly during the six years up to the introduction of Landlord & Tenant (Ground Rents) No. 1 Act 1978, which prohibited the creation of further leases of new houses.

It is normal conveyancing practice for vendors' solicitors to satisfy purchasers' and mortgagees' solicitors of the compliance with the covenants and conditions of the lease by furnishing the last receipt for ground rent. Because the nominal rents were not demanded or collected, this has become increasingly difficult. Many lessor companies are hard to contact and slow to reply to correspondence. The Joint Committee wishes to remind practitioners that it was also standard conveyancing practice to accept a Declaration of Compliance as an alternative in cases where a nominal rent was concerned. A Declaration on the general lines of the following should, in the opinion of the Joint Committee, be a perfectly acceptable alternative to the production of the last receipt for ground rent.

**Specimen Declaration**

I, ..... of ..... in the City ..... aged 21 years and upwards do solemnly and sincerely declare as follows:

I am the present owner of the lessees' interest in the Lease (hereinafter called "the Lease") dated the ..... day of ..... 19 ..... and made between A B of the one part and C D of the other part and which said Lease relates to property ..... in the County of ..... (being the entire lands comprised in Folio ..... County ..... ).

I say that since the date of acquisition by me of the lessee's interest in the Lease no demand for the Ground Rent reserved by the Lease has been received by me and no notices have been served on me by the Lessor. I further say that I have complied with all of the covenants and conditions contained in the Lease and I am not aware of any breaches thereof either by myself or by any previous owner of the lessee's interest under the Lease.

I make this solemn Declaration conscientiously believing the same to be true, for the satisfaction of ..... who have agreed to purchase the property comprised in the Lease and by virtue of the Statutory Declarations Act 1938.

DECLARED etc.

NOTE Practitioners are reminded that such a declaration is prima facie evidence only as, of course, is the evidence provided by the last receipt.



**A** Fee Farm Grant of land made after the 16th May, 1978 may be void by reason of Section 2 (1) of the Landlord and Tenant (Ground Rents) Act 1978. This subsection affects leases made after the 16th May, 1978 (being the date of the operation of the Act), if the lessee would have had the right to acquire the Fee Simple under Section 3 of the 1967 Landlord and Tenant Ground Rents Act which gives the lessees under building or proprietary leases the right to acquire the fee simple. Building or proprietary leases are defined by the Landlord and Tenant Reversionary Leases Act 1958 which by Section 2 defines a lease as including inter-alia a Fee Farm Grant. A Fee Farm Grant is accordingly capable of being a building or proprietary lease and if such may come within the provisions of Section 2 (1) of the 1978 Act.

## FEE FARM GRANTS



## GUIDELINES RE LESSOR'S TITLE

**T**he Conveyancing Committee has received a number of queries as to the enquiries into the landlord's title which ought to be made by a lessee's solicitor on the occasion of the granting of a lease at a rack rent. While the lessee is not, under the provisions of the Conveyancing or Vendor and Purchaser Acts, entitled to enquire into the lessor's title, both the practice of the profession and certain judicial pronouncements have made considerable inroads on this strict statutory position. Many of the uncertainties seem to spring from the decision in *Hill v Harris* (1965) 2 A.E.R. which has probably somewhat been misunderstood. The decision does not give authority for the proposition that a lessee's solicitor is bound to investigate fully the lessor's title and to raise requisitions thereon. It merely states that a solicitor acting for a lessee should take "the ordinary conveyancing precautions before allowing his client to take a sub-lease, or finding out by inspection of the head lease what were the covenants restrictive of user or otherwise contained in the head lease". Any prudent conveyancer acting for a client taking a lease of business or commercial property for more than a three year period should make the following investigations:

- (1) If the property to be let is held by the lessor in fee simple the lessee's solicitor should require production of a certified copy of the deed of conveyance under which the lessor purchased the premises. If the lessor's title is registered in the Land Registry the lessee's solicitor should require an up-to-date certified copy of the folio to be furnished. Alternatively, if the premises are leasehold premises or held under a fee farm grant then the lessee's solicitors should require sight of the last assurance of the property together with a copy of the original lease or fee farm grant so that the covenants and conditions in that document may be carefully checked.
- (2) The lessee's solicitor should satisfy himself that the lessor has obtained all necessary permissions under the Planning Acts for the development of the property, including its proposed use and that where relevant the necessary building by-law approvals have been granted by the local authority. The lessee's solicitor should, if the premises have recently been developed, satisfy himself that the conditions contained in the planning permissions and building bye-law approvals have been complied with and consequently it will be necessary for the solicitors to obtain copies of the planning permission, bye-law approvals and Architect's Certificates of compliance in the usual form. The Conveyancing Committee has, however, indicated that it considered it unreasonable to seek an architect's certificate of compliance in respect of any development which took place before the year 1970 since the practice of seeking such certificates was not common prior to that date.
- (3) The lessee's solicitor should make searches against the lessor, to include judgement and bankruptcy and sheriffs if the lessor's interest is a leasehold one, against the lessor or if the lessor is a company judgement, companies office and where appropriate sheriff searches against the lessor. At a minimum the lessee's solicitor should make a hand search in the Registry of Deeds against the lessor where the title



is unregistered, as and from the date of the assurance to the lessor.

- (4) The lessee's solicitor should satisfy himself as to the insurance requirements in the draft lease. If the insurance is to be carried by the lessor a copy of the policy should be sought on completion and arrangements made to have the lessee's interest noted on the policy.
- (5) In particular cases, specific enquiries may have to be raised, in particular as to the capacity of the lessor to grant the lease, but there should not normally be any need to furnish a full set of Requisitions on Title. <sup>1</sup>

## GUIDELINES RE LESSOR'S TITLE

(Contd.)

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*1. This refers to residential  
properties only*

**UPDATE:** See Recommended Pre-Leases Enquiries contained in this handbook at pages 4.23 to 4.30 and the current edition of the Law Society General Conditions of Sale.



NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES

**T**hese notes were produced by a working party of the Republic of Ireland Branch of The Royal Institution of Chartered Surveyors and the Incorporated Law Society, and are intended for the guidance of Surveyors and Solicitors concerned with the leasing of commercial property.

Some of the practical problems encountered in this relatively new field are discussed and a check-list of services appropriate to each type of property has been prepared. This is intended only as a guideline, and as circumstances are likely to vary from case to case careful consideration should be given to the particular items to be included in each lease.

#### **Introduction**

Group occupation, whether it be in an industrial estate, an office block or a shopping centre, presupposes communal services. These services are provided by the landlord and charged back to the tenants on an apportionment which is usually based on area occupied.

The need for service charges springs from group occupation of single buildings which due to modern construction techniques tend to be larger and more complicated than heretofore.

Buildings in single occupation do not normally require service charge clauses as the tenant or occupier provides his own services at his own direct cost.

The charge is on a non-profit basis providing a pool of money out of which the manager pays for heating, cleaning, wages etc. reimbursing any surplus or recouping any deficit at each year end. At this point we would emphasize the distinction between the rent in respect of the premises and the service charge in respect of the services provided by the landlord, in that no element of the premises rent is attributable to the cost of providing such services. Each service charge clause must be carefully drawn having regard to the circumstances pertaining to the particular building and in relation to other lettings, e.g. joint fire-escapes etc.

#### **General**

It is usual for service charges to be estimated for the first year of operation with each tenant paying quarterly in advance. Thereafter each year is based on the foregoing with each year's differential (if any) being collected in a lump sum at the end of the year.

On the whole leases have followed this pattern, itemising services to be charged and usually drawing a wide general over-rider in case any service has been omitted from the detailed list.

We set out below some considerations which we as a profession would like to become standard. In addition we list a representation of the services which may be required by the different types of property.



1. When setting out the proportion of service charge payable, such proportion should be quantified either as a fraction or as a percentage and not left open for negotiation. Do allow for flexibility over the years particularly in phased developments.
2. A realistic estimate for the first year's costs having been obtained, this figure should be apportioned on the basis in (1) above and provision made either to hand back any surplus at the end of the year or alternatively, to collect any shortfall.
3. It is important in the event of a partial letting only to spell out who bears the percentage of service to be levied on the voids. This has often fallen to the landlord, but if, for example, only the occupied floors were being heated there might be a case where all the heating charge should be borne by the occupiers.
4. In times of inflation it can be seen from the method of collection outlined above that the landlord basing his advance contributions on the previous year's expenditure is short a considerable sum by the year end. A provision therefore to add a percentage to the previous year's figures in an effort to maintain parity is only prudent.
5. Service charges do not include housekeeping services within the demise, nor rates nor insurances.
6. Sinking Fund - the creation of a fund for future capital expenditure is frequently included. For further details see Appendix A.
7. A clause should be incorporated referring to the auditing of accounts and should in our view specify that an accountant be used but no time limit should be stated for the provision of account, or time should not be of the essence, as such time limit can be exceeded causing more problems.
8. In any development there should be no onus on the landlord to provide the services in the event of strikes, shortage of supplies etc; the landlord should, of course, use his best endeavours to obtain supplies.

### Service Charge Components

#### (1) Office Blocks

- A. Central heating or air-conditioning to a statutory level between 15 October and 15 May and at other times as deemed necessary, including the provision of fuel, maintenance, repair, replacement, supervision of the central heating, plant and installation and purchase of spare parts.
- B. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- C. Supply of electricity to the common parts including light, power, motive power and water heating, also replacement and repair of bulbs, fittings etc.
- D. Cleaning of glass on both sides in the common parts including entrance doors, windows and glass partitions and all fixed external glass as often as considered necessary.

## NOTES ON SERVICE CHARGE CLAUSES IN COMMERCIAL LEASES

(Contd.)



**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)

- E. Supply of hot and cold water and drinking water to lavatory accommodation, tea stations and drinking fountains.
- F. Supply and maintenance of fire-fighting equipment including extinguishers, dry risers, hose reels and sprinklers and maintenance of fire exits, signs and an alarm system.
- G. Cost of fitting and maintaining internal telephone or Tannoy system, porter's telephone and house telephone.
- H. Operation and upkeep and replacement of lift service, lift plant and equipment including electricity and maintenance contract, and purchase of spare parts (if any).
- I. Maintenance and installation of emergency lights.
- J. Insurance of central heating/air-conditioning plant, lift plant and mechanical equipment generally.
- K. Repair, maintenance and decoration of interior and exterior of building, including where necessary the replacement or renewal of a section.
- L. Removal of refuse.
- M. Wages, uniform, insurance and pension premium for commissionaires and/or porters, car park attendants and all such service staff and including rent and rates for a flat in the building occupied by a resident caretaker if any.
- N. Reasonable professional fees for the management of the building by whomsoever carried out.
- O. Provision of internal and external shrubs and flowers and maintenance thereof.
- P. Reasonable accountants' fees incurred in the auditing of service charge figures.
- Q. Provision and maintenance of sanitary towel disposal systems within the women's toilet accommodation.
- S. Provision of working clothes, tools and appliances and other equipment to porter staff.
- T. Rates, if levied on the common areas.
- U. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.
- V. V.A.T. on fees or service provided in the course of management of the building.
- W. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**(2) Shopping Centres**

Some provision should be made in the service charge (or elsewhere in the lease) for the collection of promotional moneys for the centre.

**(2-1) Covered Shopping Centres**

- A. Central heating, air-conditioning or mechanical ventilation including the provision of fuel, maintenance, repair, replacement, supervision of the central heating plant and installation and purchase of spare parts.
- B. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- C. Supply of electricity to the common parts including light, power, motive power and water heating, also replacement and repair of bulbs, fittings etc.
- D. Cleaning of general glass throughout the shopping centre including shop fronts if any.
- E. Supply of hot and cold water to lavatory accommodation (if any).
- F. Supply and maintenance of fire-fighting equipment including extinguishers, dry risers, hose reels and sprinklers and maintenance of fire exits, signs and an alarm system.
- G. Cost of fitting and maintaining internal telephone system, Tannoy, piped music and close circuit television.
- H. Operation and upkeep and replacement of lift/escalator service, lift plant and equipment including electricity and maintenance contract, and purchase of spare parts (if any).
- I. Maintenance and installation of emergency lights.
- J. Insurance of central heating/air-conditioning plant, lift and escalator plant and mechanical equipment generally.
- K. Repair, maintenance and decoration of interior and exterior of building, including where necessary the replacement or renewal of a section.
- L. Removal of refuse and the cost of any equipment for treating or packaging of same.
- M. Wages, uniform, insurance and pension premium for centre manager, commissionaires and/or porters, car park attendants and all such service staff and including rent and rates for a flat in the building occupied by a resident caretaker if any.
- N. Reasonable professional fees for the management of the building by whomsoever carried out.
- O. Provision of internal and external shrubs and flowers and maintenance thereof.
- P. Reasonable accountants' fees incurred in the auditing of the service charge figures.
- Q. Provision of towels, soap, deodorisers etc. in the toilet accommodation (if any).
- R. Provision and maintenance of sanitary towel disposal system within the women's toilet accommodation.

**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)



**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
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LEASES**

(Contd.)

- S. Provision of working clothes, tools and appliances and other equipment to porter staff.
- T. Rates, if levied on the common areas.
- U. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.
- V. V.A.T. on fees or services provided in the course of management of the building.
- W. Providing traffic control to and from within the centre including the maintaining and replacing of signs and signals and other equipment.
- X. Maintenance and repair and cleaning of service area, access road and perimeter walls and where necessary rebuilding or renewal.
- Y. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**(2-2) Uncovered Shopping Centres.**

- A. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- B. Supply of electricity to the common parts including light, power and water heating, also replacement and repairs of bulbs, fittings, etc.
- C. Cleaning of glass within the centre including shop fronts.
- D. Supply of hot and cold water and drinking water to lavatory accommodation.
- E. Repair, maintenance and decoration of exterior of building, including where necessary the replacement or renewal of a section and also including downpipes, drains etc.
- F. Removal of refuse and the cost of any equipment for treating or packaging of same.
- G. Wages, uniform, insurance and pension premium for centre manager, commissionaires and/or porters, car park attendants and all such service staff and including rent and rates for a flat in the building occupied by a resident caretaker if any.
- H. Reasonable professional fees for the management of the building by whomsoever carried out.
- I. Provision of external shrubs and flowers and maintenance thereof.
- J. Reasonable accountants' fees incurred in the auditing of the service charge figures.
- K. Provision of towels, soap, deodorisers etc. in the toilet accommodation (if any).
- L. Provision and maintenance of sanitary towel disposal system within the women's toilet accommodation.



- M. Provision of working clothes, tools and appliances and other equipment to porter staff.
- N. Rates if levied on the common areas.
- O. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.
- P. V.A.T. on fees or service provided in the course of management of the building.
- Q. Maintaining and repair and cleaning of service area access roads and perimeter walls and where necessary to rebuild or renew.
- R. Providing traffic control to and from within the centre including the maintaining and replacing of signs and signals and other equipment.
- S. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**(3) Industrial Estates**

- A. Provision of fuel to central oil tank and maintenance, repair and replacement of oil tank and pipes.
- B. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- C. Supply of electricity to the common parts including light and power, also replacement and repair of bulbs, fittings etc.
- D. Insurance of heating plant.
- E. Repair, maintenance and decoration of exterior of building, including where necessary the replacement or renewal of a section.
- F. Removal of refuse.
- G. Wages, uniform, insurance and pension premium for commissionaires and/or porters, car park attendants and all such service staff.
- H. Reasonable professional fees for the management of the building by whomsoever carried out.
- I. Provision of internal and external shrubs and flowers and maintenance thereof.
- J. Reasonable accountants' fees incurred in the auditing of the service charge figures.
- K. Provision of work clothes, tools and appliances and other equipment to porter staff.
- L. Rates if levied on the common areas.
- M. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.

**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)



**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)

- N. Maintenance and repair and cleaning of the service area, access roads and perimeter walls and where necessary to build or renew.
- O. Providing traffic control to and from within the centre including the maintaining and replacing of signs and signals and other equipment.
- P. V.A.T. on fees or services provided in the course of management of the building.
- Q. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**Appendix A**

**Sinking Fund**

A major source of discussion is the construction of the sinking fund clause. At present, where included, this sub-clause is frequently drawn in very general terms leaving its implementation totally in the hands of the lessor.

1. It is our view that if such a fund is to be set up the following should be itemised:
  - a) The exact nature of the equipment for which the fund is to be used, for example, in the Plant account the boilers, fans, cooling tower, compressor, refrigeration machine but NOT the ducting or the electric wiring.
  - b) The exact cost of this equipment at installation.
  - c) An estimate of the plant's life.
  - d) A provision for updating the replacement cost say, every five years.
  - e) How the fund is to be administered, i.e. where it is to be invested, how the annual calculations as to contributions are to be made, whether the fund is to be in the joint names of landlord and tenants.
  - f) In what circumstances may the fund be drawn on.
2. It is our view that with the increase in the rate of inflation the administration and collection of such a fund is onerous on landlord and tenant alike.
3. As items of plant are insurable and as the tenant is responsible for replacement and repair it is recommended that a sinking fund contribution be omitted, but if this is so, the repairing covenant must be reinforced to include replacement of items of plant etc. either directly or through the service charge.

**Short-term Reserve Fund**

Provision may be made for a short-term reserve fund for the completion of ongoing repetitive maintenance works like painting on a three-yearly or five-yearly basis.



**E**very Rent Review Clause must include some formula on which the parties or an arbitrator may base their calculation as to what is the market rent of a hypothetical letting of the property leased. Most rent review clauses attempt to define in great detail the exact basis of the hypothetical letting. It is normal to provide that certain matters are to be disregarded such as the goodwill of the lessee's business or genuine improvements made by the lessee. Some rent review clauses however include a provision that in assessing the market rent upon a review the existence of the provision for the review of the rent at intervals shall be disregarded. The letting value of property to be leased for a term of 20 years or upwards would almost certainly be substantially greater if, in assessing that rent, the provisions for a review of rent were to be ignored. It is generally agreed by valuers and lawyers practising in this area that such provisions are not appropriate. The hypothetical lease for which the letting value is to be calculated should be identical in terms to the existing lease so that the rent will be calculated on the same basis as that of the existing lease.

The Committee advised solicitors acting for clients taking lettings of the property or purchasing property held under rack rent leases to be on guard against the existence of such a provision. Solicitors should make absolutely sure that any client who elects to proceed despite the existence of such a provision in the rent review clause has been made aware of the full implications of their position.

The question of how the Courts would interpret such a clause has not arisen in Ireland yet as far as the Committee can ascertain. It has arisen in the U.K. in a case of *Pugh and Ors - v Smiths Industries Ltd. & Ors* 264 E.G. 823 where Mr. Justice Gouldings interpreted the provisions literally. The case was fully fought and argued and in a full and reasoned judgement, he considered the arguments that the Court should not take into account the provision requiring the existence of a rent review provision to be ignored, very carefully before making his decision. The decision is, of course, quite logical and it seems likely that it would be followed in our Courts.

## TRAP FOR SOLICITORS IN RENT REVIEW CLAUSES

**LANDLORD AND  
TENANT ACT 1980****USE OF  
CARETAKER'S  
AGREEMENT**

**S**olicitors are frequently faced with the difficulty of advising a landlord who wishes to extend or renew a short term letting to a tenant which is about to expire. One of the most common devices used is to permit the tenant to occupy the premises as a caretaker during a gap between the expiring tenancy and the new tenancy. The effect of the Landlord and Tenant Act 1980 on the law as stated by the Supreme Court in the *Gatien Motor Company* case was not entirely clear.

Mr. Rory McEntee a former member of the Conveyancing Committee has obtained permission from Eoghan P. Fitzsimons S.C. to publish an extract from an opinion given to Mr. McEntee which deals with this particular matter. The Editorial Board is grateful to Mr. McEntee and Mr. Fitzsimons for permitting the publication of the extract.

By Letting Agreement dated 3rd November 1982 Querist let her shop premises at ..... to John Doe for a period of two years from the 7th October, 1983 to the 6th October 1985 at a monthly rent of £281.66. This letting expired on the 6th October last and the tenant has requested a new letting. A letting for a period in excess of a year is clearly envisaged by the tenant's legal advisors as, in seeking same, they have referred Agent to the Supreme Court decision in *Gatien Motor Company v. The Continental Oil Company Limited* (1979) I.R. 406.

The tenant has remained on in possession since the 6th October 1985. The rent has been paid by him and accepted by the Querist during this period. If Querist has to proceed to seek possession of the premises, she should be in a position to recover mesne rates for the continuing period of the tenant's occupation. Such mesne rates would be calculated on the basis of current rental values.

I am assuming for the purpose of this Opinion that the tenant's occupation of these premises commenced on the 7th October, 1983 and that, in consequence, he is now in possession for a period just in excess of two years.

I am asked to advise as to the proposal that has been put forward by the tenant's Solicitors and do so as follows:

1. The decision in the *Gatien Motor Company* case was an important one, in that for the first time judicial approval was given to a device which could circumvent the provisions of the Landlord & Tenant (Amendment) Act, 1931, giving renewal rights to a person in occupation of a business premises for a period in excess of three years. If the provisions of the Landlord and Tenant (Amendment) Act, 1980 are to be considered not to have altered to any relevant degree the equivalent provisions of the 1931 Act, the device approved in that case remains available to landlords and tenants. If utilised in the present case, it would enable Querist to retain Mr. Doe as



a tenant without finding herself in a position where he would have renewal rights to a long-term lease.

2. The original letting in the present case was for a period of two years. Querist, therefore, could safely let the premises for a further period of nine months from 6th October, 1985 without the tenant obtaining renewal rights. Following the Gatien precedent, a Caretaker's agreement could be entered into before the end of that period, on foot of which Mr. Doe would continue in occupation - rent free - for a period of one week at the end of that nine-month period. As Caretaker, Mr. Doe would not be a tenant and would hold the premises on trust for Querist for that time. During that one week period, a new Lease for a period of two years and nine months would be agreed between the parties and executed. If the Gatien Case facts were to be strictly adhered to, Mr. Doe would form a Company and that Company would take the new Lease. The formation of a Company may not, however, be essential to the scheme. It would appear to follow from the reasons given by the Supreme Court in the Gatien Case that the same exercise could be repeated at the end of a further letting period of two years and nine months.
3. The Gatien Motor Company case was decided in the context of the provisions of the Landlord and Tenant Act, 1931. The relevant provisions of the Act have now been replaced by the provisions of the Landlord and Tenant (Amendment) Act, 1980. Section 13 of that Act, which sets out the qualification periods for renewal rights, replaces Section 19 of the 1931 Act. According to it, a right to a new tenancy exists at any time if:

“the tenant was, during the whole of the period of three years ending at that time, continuously in the occupation of the person who was the tenant immediately before that time or of his predecessors in title and bona fide used wholly or partly for the purpose of carrying on a business”.

This wording is different from the equivalent provision of Section 19 of the 1931 Act. There, rights were given in respect of premises which were “bona fide used by the tenant for the time being thereof wholly or partly for the purpose of carrying on a business”.

There appears to me to be a discernible difference between the two provisions. Section 19 of the 1931 Act appears to require that a person in occupation be a tenant for the entire of the qualification period. However, on one view, Section 13 of the 1980 Act appears to simply require the person in occupation be the tenant “immediately before” the time at which he claims to be entitled to a new tenancy. The effect of the new wording may, therefore, be to nullify the effect of the Gatien Motor Company Case and enable a tenant, (in occupation of a Lease granted for a period subsequent to the week's occupation on a Caretaker's Agreement) to make the case that he was entitled to rights at the end of his new Lease as immediately before the termination or ending of same he was a tenant and had

## LANDLORD AND TENANT ACT 1980

### USE OF CARETAKER'S AGREEMENT

(Contd.)



**LANDLORD AND  
TENANT ACT 1980**

**USE OF  
CARETAKER'S  
AGREEMENT**

(Contd.)

been continuously in occupation for a period in excess of three years. For these reasons, therefore, I could not advise Querist with confidence that the Supreme Court would give approval now to a scheme of the type reviewed in the Gatien Motor Company case in view of the changes in the law made by the 1980 Act. I could not, therefore, advise Querist to proceed with the Letting in the manner as proposed.



**I**n relation to the question of arrears of ground rent the following provisions are relevant:-

## ARREARS OF GROUND RENT

1. Statute of Limitations, 1957

Under Section 28 of the Statute of Limitations 'No action shall be brought or distress made to recover arrears of a conventional rent or damages in respect thereof after the expiration of six years from the date on which the arrears became due'.

'Conventional Rent' is defined in the Statute of Limitations as 'A rent payable under a lease or other contract of tenancy (whether in writing or not and whether express or implied) ... but does not include a fee farm rent ...'.

It should be noted that this Section does not bar the landlord from collecting arrears of rent which are less than six years in arrear or from enforcing other covenants in the lease etc. It does not affect the landlord's title and only affects his ability to collect the arrears of rent.

2. Law Society's General Conditions of Sale

Under General Condition 10 (c) it is provided that 'The production of the receipt for the last gale of rent reserved by the lease or agreement therefor, under which the whole or any part of the subject property is held (without proof of the title or authority of the person giving such receipt) shall (unless the contrary appears) be accepted as conclusive evidence that all rent accrued due has been paid and all covenants and conditions in such lease or agreement and in every (if any) superior lease have been duly performed and observed or any breaches thereof (past or continuing) effectively waived or sanctioned up to the actual completion of the sale, whether or not it shall appear that the lessor or reversioner was aware of such breaches'.

3. Landlord and Tenant Law Amendment Act Ireland, 1860 (Deasy's Act)

Most Leases contain an express covenant by the lessee or tenant to pay the rent when due. Where it does not, however, Section 42 of Deasy's Act implies in every lease an agreement for the tenant and his successors in title to pay the rent when due. Under Section 52 of Deasy's Act a landlord is entitled to bring ejectment proceedings once rent is more than one year in arrear. This is now subject to 4. below.

4. Landlord and Tenant (Ground Rents) (No. 2) Act, 1978

Under Section 27 of this Act the right to re-enter and take possession of premises or to sue for ejectment under Section 52 of Deasy's Act no longer applies in the case of a dwellinghouse held under a lease where the lessee is entitled to acquire the fee simple.



**ARREARS OF  
GROUND RENT**

(Contd.)

Conclusion: While a landlord is not entitled to recover rent which is more than six years in arrear, the tenant who does not pay such rent is still technically in breach of his lease and even if he were able to obtain a receipt for the latest gale of rent, this might not satisfy General Condition 10 (c) in that it might still be quite apparent that there were other arrears outstanding.

However, since a landlord's remedies for collecting rent which is in arrears which is arrears for more than six years are non existent, purchasers should accept either a receipt for the latest gale of rent or else a declaration that the rent has not been demanded coupled with a sum to cover six years of rent.

If a landlord is sent a cheque to cover six years arrears of rent, he is entitled to allocate the money received to the earlier arrears and to refuse to issue a receipt for the latest gale of rent. When acting for a tenant it is therefore important to specify that the arrears which are being paid are in respect of the rent which has accrued within the past six years.



**T**here has never been a statutory period of time for a notice to quit tenancy of urban lands in Ireland. The Landlord and Tenant Act, 1870 and The Notice to Quit Act, 1876 only applied to agricultural property.

This has now been amended by Section 10 of the Housing (Miscellaneous Provisions) Act, 1992 Section 16 which reads:-

- (1) Subject to sub-section (2) and (3), a notice by a landlord or a tenant to the other of termination of the tenancy of a house let for rent or other valuable consideration shall not be valid unless it is in writing and is served not less than 4 weeks before the date on which it is to take effect.
- (2) This section shall not apply -
  - a) to the tenancy of a house let to a person in connection with his continuance in any office, appointment or employment,
  - b) to the tenancy of a house let bona fide for the temporary convenience of or to meet a temporary necessity of the landlord or the tenant,
  - c) to a tenancy conferring on the tenant the right to occupy a house for a holiday, or
  - d) to such other class or classes of tenancies as may be prescribed for the purposes of this section by the Minister.
- 3) Nothing in this section shall prejudice any provision of a contract or rule of law whereby a notice by a landlord or a tenant to the other of termination of the tenancy of a house is to be served more than four weeks before the date on which it is to take effect.

The effect of it is to make 4 weeks' notice mandatory unless a greater period is provided for in the contract or by "Rule of Law", the most obvious example of this category being the 6 month period required for yearly tenancies.

"House" is defined in the Act as including "any building or part of a building used or *suitable for use* as a dwelling and out office, yard, garden or other land appurtenant thereto or usually enjoyed therewith".

It should be noted that the provision applies to a tenant giving notice of termination as well as to a landlord giving such notice.

## NOTICES TO QUIT



**LANDLORD AND  
TENANT  
(AMENDMENT)  
ACT, 1994**

**RENUNCIATION**

THIS RENUNCIATION made the ..... day of .....

WHEREAS:-

1. I ..... (the Tenant) of ..... have negotiated with ..... (the Landlord) of ..... to take a tenancy of the premises at ..... which are a tenement within the meaning of the Landlord and Tenant Acts, for the term of ..... years from the ..... day of ..... the terms of the proposed tenancy providing that the tenement shall be used wholly and exclusively as an office.
2. I have received independent legal advice in relation to this renunciation from .....
3. I have been advised that under the existing legislation I would, subject to the terms of that legislation, be entitled to a new tenancy in the premises at the expiry (or sooner determination) of the proposed tenancy.

NOW I, ..... prior to the commencement of the proposed tenancy and under the provisions of Section 4 of the Landlord & Tenant (Amendment) Act 1994 DO HEREBY RENOUNCE any entitlement which I may have under the provisions of the Landlord & Tenant Acts to a new tenancy in the tenement on the termination of the proposed tenancy.

SIGNED by the said

.....

in the presence of:-



**I**n 1993, the Law Society in conjunction with the Irish Auctioneers and Valuers Institute issued standard forms of rent review clauses to be used in commercial leases<sup>1</sup>.

It has now come to the attention of the Conveyancing Committee that these rent review provisions are being incorporated into leases without appropriate amendments having first been made to the leases to connect the rent review schedule to the reddendum.

If due regard is not first given to the wording in the lease itself, the rent review may not be operable or at best may only give a review after the first five years. Accordingly, it is essential in the lease to have the following words so that the rent review provisions in the schedule become part of the lease.

"Yielding and paying therefor and thereout during each of the first [.....] years of the said term the yearly rent of £..... and thereafter during each of the successive periods of [.....] years of which the first shall begin on the ..... day of .....19..... a yearly rent equal to:

- a) The yearly rent payable hereunder during the preceding period, or
- b) Such revised yearly rent as may from time to time be ascertained in accordance with the provisions in that behalf contained in the [.....] schedule hereto whichever shall be the greater".

## **LAW SOCIETY RENT REVIEW CLAUSES**

*Published in Law Society  
Gazette, July 1997*

<sup>1</sup>Reproduced at pages A2.1  
to A2.8 hereof

**GUIDELINES RE:  
LANDLORD'S TITLE**

**T**he Conveyancing Committee issued a practice note in the Law Society Gazette in January/February, 1980 in relation to the enquiries which ought to be made in relation to title by a solicitor for a tenant on the granting of a rack rent lease. The view of the committee at that time was that enquiries need only be made in relation to a landlord's title when acting for a client taking a lease of commercial property for a period in excess of three years. This view was taken on the basis that while a tenant was not, under the provisions of the Conveyancing or the Vendor and Purchaser Acts, entitled to enquire into the landlord's title both the practice of the profession and certain judicial pronouncements (in particular the decision in *Hill v. Harris* (1965 2 A.E.R.) referred to in that practice note) had made inroads into the statutory position.

Almost 20 years have passed since the issuing of the practice note. The committee is now of the view that in relation to shorter term commercial leases the practice of the profession since then and the decision in *ICC Bank plc v. Richard Verling, Niamh Landy and Wine Dimensions Limited* (1995) 1.I.L.R.M.1.23 have resulted in an alteration of this position. In that case a two year nine month lease of an off-licence premises was granted by the first named defendant to the third named defendant. The licence was transferred into the name of the second named defendant as a nominee of the third named defendant. The plaintiff as mortgagee issued proceedings in April, 1994 in which inter alia it sought possession of the premises. Lynch J. in his judgement indicated that inter alia the second and third named defendants had to be regarded as having notice of the mortgage created by the first named defendant in favour of the plaintiff as it was registered in the Registry of Deeds and they could have discovered its existence by means of a simple search.

In view of the above the committee is of the view that prudent solicitors acting for tenants of short term leases of commercial property should make the same enquiries and investigations as those acting for tenants of longer leases. The committee is of the view that the Law Society recommended "Pre-Lease Enquiries or Check List" as published in the Law Society Gazette in May, 1990 (and reproduced in the current edition of the Conveyancing Handbook) should be raised in relation to all such leases. Practitioners should however note that this check list is at present the subject matter of a review by the committee to take account of recent legislation.

*Published in Law Society  
Gazette, May 2000*

*Note: that an updated Pre-  
lease Enquiries or Checklist  
was added to the Conveyancing  
Handbook in  
February, 2001.*



Landlord: ..... Tenant: .....

Demised Premises: .....

Your Ref: ..... Our Ref: .....

Enquiries.....Replies .....

**Title**

Furnish prima facie evidence of Landlord's title to grant the lease as follows:

**Unregistered:**

- 1.1 Certified copy Deed of Conveyance/Assignment to Landlord
- 1.2 If the Landlord's title is leasehold/fee farm grant, certified copy Head Lease or Fee Farm Grant
- 1.3 Up-to-date Receipt for Rent under Head Lease/Fee Farm Grant
- 1.4 If required, head Landlord's Consent to grant of Sub-lease

**Registered**

- 1.5 Certified copy Land Registry Folio showing landlord as registered owner with file plan attached
- 1.6 If leasehold folio, certified copy Head Lease/Fee Farm Grant
- 1.7 Up-to-date Receipt for Rent under Head Lease/Fee Farm Grant
- 1.8 If required, head Landlord's Consent to grant of Sub-Lease
- 1.9 Section 72 Declaration
- 1.10 Consent to registration of Lease as burden on Folio (may be contained in Lease)
- 1.11 Has Land Certificate issued? If so, please undertake to lodge in the Land Registry and give letter consenting to use of Land Certificate for the purpose of registering Lease.

**Company**

- 1.12 If the landlord is a company, a copy of the Certificate of Incorporation and a certified copy of the Memorandum and Articles of Association.

**Services**

- 2.1 Is the property serviced with:
  - Drainage?
  - Water?
  - Electricity?
  - Telephone?
  - Gas?

**PRE-LEASE  
ENQUIRIES OR  
CHECK LIST**



**PRE-LEASE  
ENQUIRIES OR  
CHECK LIST**  
(Contd.)

- 2.2 If applicable, furnish letter consenting to the transfer of the telephone to the Tenant.
- 2.3 Have the services (including roads, footpaths, sewers, drains) abutting or servicing the demised premises been taken over by the Local Authority and have all charges on account thereof been paid?
- 2.4 Furnish letter from the Local Authority or Solicitor's Certificate based on an inspection of the Local Authority records or personal knowledge confirming the position.
- 2.5 If the services are not in charge, furnish an Indemnity under seal unless Landlord covenants to maintain same in Lease.

**Easements and Rights**

- 3.1 Are there any pipes, drains, sewers, wires, cables or septic tank on, passing through or over property not included in the demised premises which serve or are in any way connected to or belong to the demised premises? If there are any, rights over same must be granted in the Lease and evidence of the Landlord's title to grant such easements and rights must be furnished.
- 3.2 Is the demised premises or any part of it subject to any right-of-way, water, light, air or drainage or to any other easement, reservation, covenant or restriction or to any public right of way or other public right or covenant or agreement restrictive of its user or other right of any kind?
- 3.3 If any road, path, drain, wire, cable, pipe, party wall or other facility (which is not in charge of the Local Authority) is used by the occupier of the demised premises in common with the owner or occupier of any other property, please confirm that all rights to do so are contained in the Lease and furnish evidence of the Landlord's title to grant such rights.
- 3.4 If so, please also state what (if any) are the obligations attaching to such rights.

**Notices**

- 4.1 Has any notice, certificate or order been served upon or received by the Landlord or a previous tenant of the Landlord or has the Landlord notice of any intention to serve any notice relating to the demised premises or any part of it under any Act or any statutory rule, order or statutory instrument or any amendment or extension of same?
- 4.2 If so, furnish now a copy of any such notice, certificate or order so served or received.
- 4.3 Has the same been complied with?

**Litigation**

- 5.1 Is there any litigation pending or threatened in relation to the demised premises or



- any part of it or has any adverse claim thereto been made by any person?
- 5.2 If the Landlord is an individual, confirm that no orders affecting the demised premises have been made pursuant to the provisions of the Judicial Separation and Family Law Reform Act 1989, the Family Law Act, 1995 or the Family Law (Divorce) Act, 1996?

### **Mortgage**

- 6.1 Is the Landlord's interest in the demised premises or any part of it subject to any mortgage or charge? If so, please give full particulars and, if necessary, join the mortgagee in the Lease in order to grant and confirm same or if it is a floating charge furnish letter confirming non crystallisation.
- 6.2 If applicable furnish Certificate of Company Secretary that the Landlord Company has not executed any charges of any description which are not shown as registered in the Companies Registration Office.
- 6.3 If applicable, furnish Certificate of Company Secretary that no resolution to wind up the Landlord Company has been passed and that no Notice of a meeting at which it is proposed to wind up the Company has been issued or been published and that no petition has been presented or is pending to wind up the Company or to place the Company in Receivership or to have a Receiver appointed.

### **Searches**

The Tenant shall search against the Landlord in:

- 7.1 If unregistered title, Registry of Deeds from date of Deed to Landlord
- 7.2 If registered, in the Land Registry
- 7.3 If Landlord's interest is leasehold, in the Sheriff's Office
- 7.4 If the Landlord is a Company, in the Companies Office
- 7.5 If the Landlord is an individual, in the Bankruptcy Office
- 7.6 In the Judgements Office
- 7.7 The Landlord shall explain and discharge all adverse acts appearing on such Searches.

### **Local Government (Planning and Development) Acts 1963 to 1999 and the Planning and Development Act, 2000 ('the Acts')**

- 8.1 Has there been in relation to the demised premises any development (including change of use or exempted development) within the meaning of the Acts on or after the 1st October 1964?
- 8.2 In respect of any such development furnish (where applicable):
- a) Grant of Planning Permission or
  - b) Outline Planning Permission and Grant of Approval
  - c) Building Bye-Law Approval (if applicable)

## **PRE-LEASE ENQUIRIES OR CHECK LIST**

(Contd.)



**PRE-LEASE  
ENQUIRIES OR  
CHECK LIST**

(Contd.)

- 8.3 In respect of development completed after the 1st November 1976 furnish evidence by way of statutory declaration of competent person that each development was completed prior to expiration of the Permission/Approval.
- 8.4 Has the demised premises been used for the use proposed under the Lease without material change continuously since the 1st day of October 1964? If so, please furnish statutory declaration evidencing same.
- 8.5 If the demised premises has been developed since the 1st October 1964 please furnish Architect's Certificate of Compliance with Planning Permission and (if applicable) Building Bye-Law Approval. (Note: If such a certificate is not available then the covenant in the Lease to comply with Planning Acts should be modified).

**Building Control Act 1990 and any Regulations Order or Instrument thereunder (referred to collectively as "the Regulations")**

- 9.1 Is the property or any part thereof affected by any of the provisions of the Regulations?
- 9.2 If it is claimed that the property is not affected by the Regulations state why. Evidence by way of a Statutory Declaration of a competent person may be required to verify the reply.
- 9.3 If the property is affected by the Regulations furnish now a Certificate/Opinion of Compliance by a competent person confirming that all necessary requirements of the Regulations have been met.
- 9.4 a. Has a Commencement Notice been given to the Building Control Authority in respect of the property?  
b. If so furnish now a copy of the same.
- 9.5 If the property is such that a Fire Safety Certificate is one of the requirements of the Regulations:  
a. A copy of the Fire Safety Certificate must be attached to and referred to in the Certificate of Compliance which should confirm that the works to the property have been carried out in accordance with the drawings and other particulars on foot of which the Fire Safety Certificate was obtained and with any conditions of the Fire Safety Certificate.  
b. Confirm that no appeal was made by the Applicant for such Certificate against any of the conditions imposed by the Building Control Authority in such Fire Safety Certificate.
- 9.6 a. Has any Enforcement Notice under Section 8 of the Building Control Act been served?  
b. If so furnish now a copy of the Notice and a Certificate of Compliance made by a competent person.
- 9.7 If any application has been made to the District Court under Section 9 of Building



Control Act 1990 furnish details of the result of such application.

- 9.8 a. Has any application been made to the High Court under Section 12 of Building Control Act 1990?
- b. If so furnish a copy of any Order made by the Court and evidence of any necessary compliance with such order by a Certificate of a competent person.

#### **Fire Services Act 1981**

- 10.1 Have any notices been served on the Landlord or any previous tenant under the Fire Services Act 1981?
- 10.2 Are there any proceedings pending under the Fire Services Act 1981?
- 10.3 Has the demised premises ever been inspected by the Fire Authority for the functional area within which the demised premises are situate? If so, what were its requirements?
- 10.4 Have the requirements of the Fire Authority been fully complied with in relation to the demised premises and (if applicable) the building of which it forms part?

#### **Safety Health and Welfare at Work (Construction) Regulations 1995**

##### **("the Regulations")**

- 11.1 Has any construction work (as defined in the Regulations) been undertaken by the Client (as defined in the Regulations) at or in the premises where the construction stage (as defined in the Regulations) was subsequent to 1 March 1996?
- 11.2 If so furnish now copy Safety File containing the information required by the Regulations and furnish (if applicable) original Safety File on completion.

#### **Rates**

- 12.1 What is the rateable valuation of the demised premises?
- 12.2 Furnish evidence of payment of rates for current year.
- 12.3 Confirm that rates will be apportioned as of the date the Tenant commences to be liable.
- 12.4 Is there a separate water rate or refuse charge payable? If so give full particulars including the party to whom the charge is payable, the basis of the charge and any agreement or contract which regulates its payment.

#### **Insurance**

- 13.1 If Landlord is insuring, furnish certified copy of Landlord's insurance policy and receipt for latest premiums.
- 13.2 Confirm that either Tenant's interest will be noted on the policy or a letter from the Landlord's insurers will be furnished waiving subrogation rights and confirming that the policy contains a tenants "non invalidation" clause.

### **PRE-LEASE ENQUIRIES OR CHECK LIST**

(Contd.)



**PRE-LEASE  
ENQUIRIES OR  
CHECK LIST**

(Contd.)

**Multi-storey Building**

- 14.1 Is the demised premises a 'multi-storey building' (or part of such of building) within the meaning of the local Government (Multi-Storey Buildings) Act 1988?  
**or**

Does it form part of a development in which there is a multi-storey building and in respect of which the Tenant may be required to make a contribution by way of service charge or otherwise to the cost of repair or compliance with statutory requirements?

If so, the Tenant reserves the right to raise specific Requisitions in regard to the Local Government (Multi-Storey Buildings) Act 1988.

**Family Home Protection Act 1976, Family Law Acts 1981 and 1995, Judicial Separation and Family Law Reform Act 1989 and Family Law (Divorce) Act 1996**

15. Furnish Certificate that the demised premises are not affected by the above Acts.

**Taxation**

- 16.1 Is the landlord resident in the State for tax purposes? If not confirm that the rent will be paid directly to his agent who is resident in the State for tax purposes.

**Value Added Tax**

**17.1 History of Vatable Interest**

1. When the Vendor acquired its interest in the property was VAT incurred on the acquisition price?
2. Did the Vendor acquire its interest in the property as a transfer of a business or part of a business from another VATable person within the meaning of Section 3(5)(b)(iii) VATA, 1972?
3. Has there been any "development" (within the meaning of the Value Added Tax Act, 1972) on or affecting the property since 1<sup>st</sup> November 1972?
4. In relation to any VAT incurred in relation to either activities at 1, 2 or 3 above did the Vendor become entitled to recover any element of VAT on the acquisition or development in accordance with Section 12, VATA 1972?
5. Has the property at any time subsequent to recovering input VAT as indicated at 4 above become the subject of a self supply within the meaning of Section 3(1)(e) or 3(1)(f), VATA 1972? If so please explain.

**17.2 Is the current supply vatable?**

1. Is the current disposal a transfer of a business or part of a business to another VATable person within the meaning of Section 3(5)(b)(iii), VATA 1972?



2. Does VAT arise on this transaction at any rate of VAT?
3. If no VAT arises, please explain why.
4. If VAT does arise, please explain why.
5. If VAT does arise, how is the amount of VAT calculated?

### 17.3 Vendor Charging VAT

1. Does the Vendor intend to charge VAT to the Purchaser?
2. Is the current disposal a taxable assignment or surrender of a leasehold interest such that the provisions of Section 4(8), VATA 1972 apply so that the Vendor is not accountable for VAT on the supply?
3. Where it is proposed to charge VAT to the Purchaser, please furnish a draft VAT Invoice now.

### 17.4 Section 4A VATA 1972 Reverse Charge Procedure

1. On the creation of a lease of 10 years or more where the Purchaser indicates an intention to avail of the Section 4A VATA 1972 procedure, please confirm that the Vendor will agree to use the Section 4A, VATA 1972 procedure.
2. If so, please furnish Form VAT 4A with Section A completed.
3. Please confirm that the Vendor will submit the duly completed Form VAT 4A to its Inspector of Taxes on a timely basis so as to ensure that Form VAT 4B will be available prior to completion.

### 17.5 Other Leasehold Interests

1. Is the property being disposed of the subject of leasehold interests created by the Vendor or its predecessor, or have any such leasehold interests previously existed since 1 November 1972?
2. Where there are any VATable leasehold interests in the property please confirm in respect of each such leasehold interest:-
  - (a) The date of creation of each such lease.
  - (b) The date of expiry of the leasehold term.
  - (c) The VAT charged (if any) on the creation of the lease
  - (d) Whether the tenant (or its predecessor in title) of any leasehold interest has developed the property (or any part thereof) within the meaning of the VATA 1972 since 1 November 1972.
  - (e) Whether the provisions of any such lease contain an option such that the tenant may extend the lease period.
  - (f) The VAT life of any such leasehold interests.

## PRE-LEASE ENQUIRIES OR CHECK LIST

(Contd.)



**PRE-LEASE  
ENQUIRIES OR  
CHECK LIST**

(Contd.)

3. Has there been any surrender, abandonment, ejectment or forfeiture of any such leasehold interest?
4. Please give details of any such events.
5. Has there been any “development” (within the meaning of VATA, 1972) subsequent to any such surrender, abandonment, ejectment or forfeiture? <sup>1</sup>

Add Milk Quota Regulations where relevant.

*These pre-lease enquiries were originally circulated as part of the first update to the 2nd edition of Conveyancing Handbook in February, 2001*

<sup>1</sup>. Please see the Explanatory Memorandum on the VAT Requisitions at page 8.9 hereof (originally circulated to the profession October, 2000).



In response to requests from practitioners, the Conveyancing Committee has drafted a precedent renunciation pursuant to Section 191 of the Residential Tenancies Act 2004 as follows:-

**RESIDENTIAL TENANCIES ACT 2004  
RENUNCIATION UNDER SECTION 191**

**THIS RENUNCIATION** made the \_\_\_\_\_ day of \_\_\_\_\_ 20

1. I,     **A.B.**    , of \_\_\_\_\_

\_\_\_\_\_ have, as of the date hereof, been in continuous occupation of the premises known as

\_\_\_\_\_ (hereinafter referred to as “the said Premises”) for upwards of \_\_\_\_\_ years.

2. The said Premises is a “tenement” within the meaning of the Landlord and Tenant Acts and is a “dwelling” within the meaning of Section 4 of the Residential Tenancies Act 2004 (“the 2004 Act”).

3. The Landlord of the said Premises is     **C.D.**     of \_\_\_\_\_

\_\_\_\_\_ (hereinafter called “the Landlord”).

4. I have received independent legal advice in relation to this Renunciation from \_\_\_\_\_.

5. I have been advised that under the terms of the Landlord and Tenant Acts I would be entitled to a new tenancy in the said Premises at the expiry of the period provided for in Section 13 (1) (b) of the Landlord and Tenant (Amendment) Act 1980.

6. **NOW I**, in consideration of the Landlord granting me a Part 4 tenancy (within the meaning of Section 29 of the 2004 Act) in the said Premises under the 2004 Act, (or set out such other consideration, if any, as may be applicable) **DO HEREBY**, pursuant to Section 191 of the 2004 Act **RENOUNCE** any entitlement I may have under the provisions of the Landlord and Tenant Acts to a new tenancy on the expiry of the term provided for by Section 13(1)(b) of the Landlord and Tenant (Amendment) Act 1980.

SIGNED by the said

    **A.B.**    

in the presence of:

**RENUNCIATION  
UNDER S. 191  
RESIDENTIAL  
TENANCIES ACT  
2004**

*Published in  
Law Society Gazette,  
May 2005*