

JUNE 2024



UPDATE TO OUR COMMERCIAL PROPERTY TEAM

We have experienced an exciting period of growth in our Commercial Property team in the last six months, with the arrival of Ian McLoone, Andrew Devereux and Diana Yip bolstering our offering. The team is now eight lawyers strong and works closely with our Property Litigation team to service commercial clients.

Our experienced team can assist with buying and selling freehold and leasehold land, drafting leases, licences, rent deposit deeds and surrenders, dealing with 1954 Act lease renewals, drafting contracts, options and overage agreements, refinancing work, and residential development and land acquisition.

Ian McLoone joins Machins as a consultant solicitor having previously been a partner at other Bedfordshire-based firms.

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He has established a loyal following of clients in his 25 years of practice in and around Luton and prides himself on his pragmatic and informal approach.

Andrew Devereux has joined the team as a consultant solicitor with more than 37 years of experience, having previously been based in and around Hitchin. Andrew is able to deal with a wide range of commercial property matters but primarily specialises in strategic land acquisitions and estate set ups and acts for several regional developers.

Diana Yip joined the team in late 2023, having previously worked at a leading firm in Cambridge. Diana is renowned for her modern approach, offering sound commercial advice and delivering exemplary client service.

The arrival of Ian, Andrew and Diana has reinforced the Machins team's regional strength and capacity to deal with a variety of commercial property matters. We celebrated our centenary in 2020 and look forward to continuing to work with local, regional and national clients for the next 100 years.

Simeon Clipstone
Partner - Commercial Property

NEW LEASE TRIPS AND TRAPS FOR COMMERCIAL TENANTS

Litigation is a road which few wish to go down if it can be avoided.

By taking professional advice before a lease is entered into, much of the potential for dispute when a lease ends can be tackled up front at the "heads of terms" stage. It is therefore advisable to arrange for either your own surveyor or solicitor to review the agreement which you have reached with your landlord in order to highlight any potential problems for the future

Below are a number of issues which can be contentious at the end of a lease but which can easily be addressed at the outset before it is entered into:-

- Do I have the right to terminate the lease early (a so-called "break clause"). If so, any such right should only be conditional on the tenant giving vacant possession and paying the rent due up to the break date.
- What is the expected standard of repair and am I signing up to an obligation to hand back the premises in better condition than they were at the outset? Agreeing to a schedule of condition means that the tenant isn't obliged to put the premises in any better state of repair than it was at the outset which can save considerable expense at the end of the lease.
- Will the landlord have the right to require me to vacate the property at the end of the lease term or will I have the right to a new lease (a "protected tenancy")? Landlords will often try to get a tenant to sign away their (normally) automatic right to renew a business lease. With many businesses, location is crucial and this can be a massive "own goal" for the tenant.
- Do I want to personally guarantee the obligations of my company which is going to take the lease? Rather than put my assets on the line, perhaps it would be better to offer the landlord a rent deposit and avoid personal liability?

There are a multitude of other issues which can arise, and our Commercial Property and Dispute Resolution teams are well experienced to advise on the potential pitfalls before the basic terms of a lease are even agreed.

COMPENSATION FOR PROTECTED TENANCIES: HIGHER RATE OF COMPENSATION AND PREDECESSORS

Under the Landlord and Tenant Act 1954, a business tenant has a statutory right to renew their lease at the end of the contractual term if they are able to meet certain criteria.

If the landlord wishes to oppose the renewal of the tenant's lease, it must rely on one of the grounds set out in section 30 of the Landlord and Tenant Act 1954. Some of the grounds are fault-based (e.g. the tenant's persistent delay in paying rent under ground (b)) and some are no-fault based (e.g. the landlord wants to redevelop under ground (f)). If the landlord opposes the renewal of the lease based on one of the no-fault based grounds (grounds (e), (f) or (g)), then the tenant may be entitled to compensation.

Landlords and tenants can instruct valuers to calculate compensation, which is calculated by applying a multiplier to the rateable value of the property. If the tenant and any predecessor have been occupying the property for the purpose of the same business for 14 years or more, the compensation will double.

So what constitutes a 'predecessor' such that the higher rate of compensation will apply?

It is well settled that previous tenancies held by the tenant outside the scope of the Landlord and Tenant Act 1954 can still be included in calculating the 14 year period of occupation. If, however, there has been a change of occupier during the 14 year period, the question arises as to whether that will be sufficient to warrant the higher level of compensation.

The law suggests that the occupier must not simply carry on the same or a similar type of business but be a successor to the actual business. In *Cramas Properties Limited v Connaught Fur Trimmings Limited* [1965] 1 WLR 892, the tenant was carrying on a similar but unrelated business to their predecessor. The court held that this was not sufficient, and that there must have been some sort of transfer of the goodwill of the business.



'LAND GRABBING' AKA ADVERSE POSSESSION: THE OLD RULES TO THE NEW

Adverse possession is a legal principle that allows a person to claim ownership of land under certain conditions, even if someone else is the lawful owner. It is the legal principle that can be known as 'land grabbing', where someone maintains or otherwise looks after a piece of land for a period of time and then seeks to claim ownership of it.

This principle has evolved over time, with the biggest change being the Land Registration Act 2002, reflecting shifts in societal attitudes and legal priorities. Adverse possession allows an individual to claim ownership of land by possessing it in a manner that is actual, open, exclusive, and continuous.

The old rules: Limitation Act 1980

The Limitation Act 1980 previously set the groundwork for adverse possession until significant changes were introduced in October 2003. However, the old rules continue to apply in the context of unregistered land.

Key points to note are as follows:-

1. Statutory Period: To claim ownership via adverse possession under the Limitation Act 1980, the claimant must have occupied the land continuously for 12 years.
2. Unregistered Land: These rules continue to apply to unregistered land, although prior to October 2003, the rules applied whether the land is registered or not. After 12 years of adverse possession, the adverse possessor can legally claim ownership, and the original owner's title is extinguished.
3. Lack of Notification: The Act does not require the adverse possessor to notify the true owner during the 12 year period, often leaving the owner unaware of the claim until the statutory period is completed and their title extinguished.

The new rules: Land Registration Act 2002

The Land Registration Act 2002 which came into force in October 2003 introduced significant changes, primarily for registered land, reflecting modern legal standards and property management practices. The rules that were introduced under this legislation were intended to make it more difficult for people to act purposefully in order to seek to claim ownership of other people's land.

Key points to note are as follows:-

1. Statutory Period: The adverse possessor must occupy the land for a continuous period of 10 years to make a claim, a shorter period compared to the 12 years required by the Limitation Act 1980.
2. Registered Land: This Act applies to registered land. The vast majority of land in the UK is now registered.
3. Owner's Response: The claimant must make an application to claim ownership and the registered owner is notified and has opportunity to object. If the owner objects, the adverse possessor's application is usually rejected unless specific conditions are met, which are listed below.
4. Three Exceptions: The claimant may succeed if they can prove one of following three exceptions apply: estoppel (the owner led the claimant to believe they had a right to the land), entitlement to the land (the claimant has some other legal right to the land), or the claimant made a reasonable mistake about boundaries.
5. Enhanced Protection for Owners: The Land Registration Act 2002 provides stronger protections for registered landowners by ensuring they are notified of adverse possession claims and have opportunity to object, and by requiring a claimant to rely on one of the above three exceptions.

Key differences

The change in legislation in this area represents a shift towards greater transparency and protection for landowners:

1. Notification: The Land Registration Act 2002 mandates formal notification to the registered owner, whereas the Limitation Act 1980 does not require any notification, often leaving owners in the dark about land that has been possessed without their knowledge.
2. Response Opportunity to object: The Land Registration Act 2002 allows landowners to contest adverse possession claims, a provision absent in the Limitation Act 1980, which automatically extinguishes the original owner's title after 12 years.
3. Statutory Period: The required period for adverse possession is 12 years under the Limitation Act 1980 and 10 years under the Land Registration Act 2002.
4. Scope: Nowadays, the Limitation Act 1980 primarily applies to unregistered land, while the Land Registration Act 2002 pertains to registered land, reflecting the increasing prevalence of land registration.

Adverse possession remains a fundamental doctrine in property law, but its application has evolved significantly. The shift from old to new laws reflects broader changes in societal values, economic conditions, and legal principles. Understanding these changes is crucial for anyone involved in property, as the modern legal landscape seeks to balance the rights of landowners with the practicalities of land use in an ever-changing world.

BACK TO BASICS - WHAT IS A BREAK CLAUSE?

If you are new to the commercial property sphere, you may have heard the phrase 'break clause' being banded around and have wondered what exactly it means.

A break clause (sometimes known as an 'option to determine') is a mechanism in commercial leases whereby either a landlord or tenant (or both) can end the lease before the fixed contractual term subject to complying with certain conditions set out in the lease. They are not always included in commercial leases and their inclusion are normally a point for careful negotiation between the parties.

Break Clauses can be very complex and are one of the most contentious areas of commercial property law. It is therefore important to consider the following points when negotiating a break clause:

1. Notice - a break clause will usually state a specified noticed period by which a party must serve the break notice. In most commercial leases this period tends to be between 3 to 6 months. However, this period can be longer.
2. Conditions - a well drafted break clause will normally specify conditions that must be satisfied before either party can exercise the break notice. The standard conditions are:
 - The annual rent is paid up to date, with a clause to state that the landlord will reimburse the tenant for any rent paid for a period after the break clause has been exercised.
 - Vacant possession is provided at the end of the break date.



The list however is non-exhaustive and often these conditions can be a key area of negotiation between parties.

It is, therefore, important that either party wishing to rely on a break clause in a commercial leases seeks legal advice when negotiating the terms of a break clause, and also before seeking to exercise a break clause. As outlined above, a party must comply with the strict conditions outlined in a lease before serving a break notice. Getting a break clause wrong or not complying with its conditions can prove to be extremely costly as failing to properly exercise a break clause can mean that the lease will continue for the entire fixed term. This can mean that the as a landlord can be stuck with a tenant that they do not want, or a tenant can be stuck paying rent for a property which they no longer have a use for!

The above is by no means a comprehensive note on break clauses and you should always seek legal advice before drafting, negotiating or exercising the terms of a break clause.

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Team on 01582 514 000.



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Machins Solicitors LLP have offices in Berkhamsted and Luton. We are one of the leading law firms in Hertfordshire and Bedfordshire and recognise the need to establish a proper relationship with our clients which allows us to understand individual requirements and to give effective practical advice in a pragmatic, cost effective way. We provide specialist advice and assistance both for businesses and individuals.