

Division: Law

Specialization: private Law

(Second Year)

Commercial Law Glossary

Adverse Possession – is where an entity has occupied land or a property (not owned by the crown) for a period of at least 12 years and actively treated the land or property as their own, without permission or payment.

Articles of Association – this is a document produced upon initial registration of the company, and sets out the regulations and rules for operation of the company as agreed by the shareholders. The articles of association are, in essence, the constitution of the company which directors must follow and comply with during day to day operations. If company specific articles are not required, the model articles of association (a base document which accords with usual practice and statutory provisions) may be adopted. The shareholders of a company can agreed to amend the articles after incorporation, though a strict procedure must be followed, and the changes registered at Companies House.

Agreement for Lease – this is a contract entered into by a landlord and tenant to confirm that the parties will enter into a formal lease after certain conditions have been completed. These are often used when works are required before occupation, or planning permission is awaited.

Asbestos Survey – a report which confirms whether and where asbestos is present within a building. If present, an asbestos management plan is put in place to monitor the material.

Assign – this is another word used instead of transfer.

Break Option – a landlord and tenant may agree that a tenant can end their lease early (on an agreed date) provided that certain conditions are met, proper notice is given, and there are no outstanding payments due by the tenant at the time notice is given or the date on which the lease ends.

Certificate of Incorporation – a certificate issued when a limited company is first registered at Companies House containing key company information (name, registered number), which confirms that the company legally exists and is able to trade.

Community Infrastructure Levy (CIL) – is a payment due to a local council in relation to a proposed development, and will be detailed as part of the planning permission granted.

Completion – is when funds are sent from the buyer or tenant's solicitors to the seller or landlord's solicitors, and all signed documents are dated (excluding the contract which has usually already been exchanged).

Conditional Contract – this is an agreement between a buyer and seller to complete the purchase of land or a property after certain events have happened.

Contract – this ties the buying and selling parties into the sale.

CPSE's – an acronym for Commercial Property Standard Enquiries. There are 7 different types of CPSEs, depending on the transaction to be completed, and these provide further detail about the property.

Covenant – a restriction or condition affecting a property with which all owners or occupiers must comply. These do not end on a sale of a property.

Deed of Easement – the binding document which grants an Easement and sets out the terms on which it may be used.

Easement – a right over another person's property.

Energy Performance Certificate (EPC) – In England and Wales when you are selling or granting a lease of a property you are required to provide an EPC for that property. This gives details of the energy efficiency of the property. The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 mean that, from April 2018, private non-domestic (and domestic) landlords must ensure that properties they rent in England and Wales reach at least an Energy Performance Certificate rating of "E" before granting a lease. A lease can place further obligations upon the tenant in relation to the energy efficiency or environmental impact of a property.

Exchange – when the different parties have signed their contracts, and their solicitors date the contract and agree a completion date.

Fire Risk Assessment – a report which confirms the compliance of a building with fire safety regulations, or areas which require improvement or attention.

Freehold – you own the building and the land on which it sits.

Forfeiture – where a landlord ends a lease, due to non-payment of rent or breach of the lease terms, by re-taking possession.

Independent Legal Advice – where an individual must obtain advice from an adviser who is not directly involved in a transaction, to ensure they understand their obligations and the associated consequences.

Lease – an agreement which provides a tenant with exclusive possession of a property, for which they pay rent, and any other fees as agreed, to a landlord.

Leasehold – your use and occupation of the property is granted by a lease from the landlord, and you must leave the property at the end of your lease. You will pay the landlord rent in exchange for using the property.

Licence – an agreement which provides a temporary right to do something, whether this is occupy the whole or part of a property or to use a car park, but this will not be exclusive to the receiver of the licence.

Licence to Assign – you cannot transfer an existing lease to a third party unless the lease confirms you are able to, and the landlord has provided their permission which is granted within a formal Licence to Assign.

Licence for Works – as a tenant you cannot undertake any work to a property without the landlord's prior permission, and this permission is granted as a formal Licence, setting out the landlord's rules for any works to be completed.

Memorandum of Association – a legal statement by the initial shareholders that they wish to incorporate the company, and setting out the aims, objectives, and permissions for external dealings of the company. This also includes the name of the company, proposed trade, and confirms adoption of the articles of association. More recently, a separate memorandum is no longer required, and the memorandum can form part of the articles of association when a company is first incorporated.

Mutual Break Option – this entitles either tenant **OR** landlord to end the lease early provided that certain conditions are met, and proper notice is given.

Option Agreement – a type of contract used when an interested party wants to purchase the right to buy land or a property in the future, usually after they have obtained planning permission for their proposed development. An Option Fee is paid on completion of the agreement, but will be offset if the interested party proceeds to purchase the land or property.

Option to Tax – this is where a freehold owner or landlord registers their commercial premises to charge VAT on either the value of the property upon a sale, or on the rent they may charge.

Option Fee – the sum to be paid to a land or property owner on completion of an Option Agreement.

Overage – an additional payment (either fixed balance or an agreed percentage) to be made by a buyer to a seller on completion of a buyer's development.

Overage Agreement – this document confirms the terms of the Overage such as why and when it is to be paid.

Personal Guarantee – where a limited company or partnership is taking mortgage finance, the individual directors or partners may be required by the lender to personally guarantee the borrowed funds, as a condition of the borrowing.

Premium – a one off sum paid by a tenant to a landlord at the beginning of a lease.

Rent – the amount a tenant pays to the landlord as defined within the lease.

Rent Deposit – this is an amount you will pay to the landlord at the start of your lease to be held until the end of the lease. VAT cannot be charged on a deposit, but if VAT is payable on the rent, the landlord can request 'an amount equivalent to VAT' to be paid as part of the deposit.

Rent Deposit Deed – if you pay a Rent Deposit at the start of the lease, this agreement sets out the rules on how the landlord may use and return the rent deposit, and when the tenant may have to top up the rent deposit.

Rent Review – a lease may contain a review where the rent is increased periodically throughout the term of the lease.

Searches – regulated searches which provide information such as connection to mains drainage, potential land contamination, and ownership of the roads abutting the property

or land. These are compulsory when you are obtaining mortgage finance, and are optional but recommended if you are a cash purchaser.

Security of Tenure – the right to an automatic renewal of a commercial lease at the end of the term (subject to some exceptions), and this is granted by Section 25 of the Landlord and Tenant Act 1954.

Service Charge – an additional payment due under a lease from a tenant to a landlord, in respect of services provided by the landlord, ie. heating, security, communal areas, cleaning etc.

Statutory Declaration – a legal statement sworn in front of a solicitor or commissioner of oaths.

Term – the number of years for which the lease is granted.

Transfer – this is the legal document which transfers title in the property from buyer to seller.

Use Classes Order – this list sets out what a property may be used for, depending upon the class of use for which an application has been made to a local council.

VAT – Value Added Tax, this may be payable when renting or purchasing commercial property, and therefore increases the purchase price or rental amount.

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CONTACT INFO

17 Duke Street, Chelmsford, Essex CM1 1JU

Phone: [01245 893400](tel:01245 893400)

Fax: [01245 281266](tel:01245 281266)

Email: info@backhouse-solicitors.co.uk

Web: www.backhouse-solicitors.co.uk

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