



Geldards LLP

Letting & Hiring

Case Study

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Seminar Presentation Case Studies
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Let's Talk

Case Study: Example 1

UAC is an Unincorporated Association Charity which owns its own building which is too large for its current needs. UAC decides to lease part of the building for 10 years to the Local Authority for use as a library. The building is held by the trustees of the charity.

- The proposed lease of part of the building will be a disposal and section 36 of the Charities Act 1993 will apply. UAC will therefore either have to obtain the Charity Commission's consent to the disposal or take surveyor's advice, advertise the proposed disposal and be satisfied that the terms of the proposed disposition are the best that can reasonably be obtained for the charity.
- As UAC is an unincorporated Association the lease will be between the trustees of the charity and the tenant.
- UAC is advised that the lease should be contracted out of the provisions of part II of the Landlord and Tenant Act 1954 to ensure that the tenant does not obtain security of tenure.
- As it is a lease for 10 years, UAC decides that the tenant will be able to assign and underlet the lease.
- UAC has taken advice from a surveyor as to the level of rent and the fact that there should be a rent review in the fifth year of the term.
- In case UAC grows more quickly than anticipated UAC will include a break clause in the lease allowing it to be end the lease if UAC gives 6 month's notice to the Tenant on the fifth anniversary of the term of the lease.
- UAC will repair the structure of the building but will reclaim the costs from the tenant by way of service charge.
- UAC will not allow the Property to be used for any purposes other than a library.

Case Study : Example 2

Playgroup, an incorporated charity, needs more space in order to be able to expand. It has decided to take a licence to occupy of a room in the next door property until it finds a bigger property.

- The licence will be between the Licensor (the owner of the next door property) and Playgroup because Playgroup is an incorporated charity.
- Playgroup will pay the licence fee on the 1st day of every month during the licence period.
- The licence period will be for a term of 12 months for use during the hours of 9am – 6pm.
- The right for Playgroup to use the Property is granted in common with the right of the Licensor and anyone authorised by him to use it. The Licence states that the Licensor retains control possession and management of the Property and that Playgroup has no right to exclude the Licensor from the Property. The risk that the licence could be construed as a lease is therefore diminished because of these clauses, and it is very unlikely that Playgroup will acquire any security of tenure.
- Playgroup will have to keep the Property clean and tidy and clear of rubbish.
- The licence will end on the earliest of: 12 months' from the date of completion; after the Licensor has given notice to Playgroup that it has breached any of its obligations in the licence; or 1 month after notice of termination has been given by either party to the other.
- Section 36 does not apply to a licence and no statements need to be included within it.

Case Study : Example 3

A corporate charity ("Corp") has bought a new property that is too big for its current needs. Corp believes however that it is likely to need to use all of the property in the next few years. Corp has therefore decided to try to rent the unused rooms to a tenant for 3 years.

- As this is a lease of less than seven years, section 36 (5) of the Charities Act 1993 will apply to this disposal. Charity Commission consent must therefore be obtained by Corp unless it obtains advice from a person who the trustees think has the necessary ability and practical experience to provide them with competent advice on the disposition and the trustees decide that they are satisfied, having considered that advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.
- The lease will be between Corp and the tenant and will contain the necessary section 36 statements and certificates.
- The lease to the tenant will absolutely prohibit any form of alienation as the lease is for a short term.
- The lease will be contracted out of the Landlord and Tenant Act 1954 so that the tenant will not have security of tenure.
- The rent will not be reviewed during the term and neither party will be able to end the lease early.
- The tenant will be granted a right to use the kitchen and toilet facilities in the part of the building used by Corp.
- The tenant will be obliged to repair the interior of the rooms leased but not the structure of the building.

Case Study : Example 4

JRM, an unincorporated trust needs to acquire a new long term lease of a building. It has decided to take a long lease of premises from a commercial landlord.

- The landlord and the trustees of JRM will be the parties to the lease which will contain a statement in the lease confirming JRM's status as a charity and confirming that section 36 will apply if JRM disposes of the property at a later date.
- The lease will be for a term of 99 years.
- A premium will be paid on completion of the lease, after surveyor's advice has been taken, and only a nominal rent will then be paid annually.
- The property is not in excellent condition and JRM will not therefore agree to be responsible for repairing the whole of the property. A schedule of condition will be attached to the property so that JRM will only have to put the property in as good a state of repair and condition as is shown by that schedule.
- There are no restrictions on when JRM can sell or underlet the property.