

Real Estate Tip of the Week: Keeping your options (to renew) open

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To reduce liability to pay stamp duty land tax (SDLT), tenants may seek the inclusion of an option to renew the lease instead of a break option.

The option will be exercisable within a defined period, with the renewal lease usually commencing immediately after the expiry of the initial term of the lease.

If an option to renew is agreed, landlords should consider the following:

- The renewal clause should be drafted to ensure the appropriate rent is payable during the renewal term. An open market (or other form of) rent review could take place on the first day of the term of the renewal lease. Avoid provisions allowing the rent to be renegotiated when the option is exercised as this may inadvertently create a condition precedent to the renewal of the lease and cause uncertainty.
- An option to renew can be drafted whether or not the initial lease is protected by the security of tenure provisions of the Landlord and Tenant Act 1954, but there are particular issues to take into account in each case.
- The option can be drafted as personal to the original named tenant, or to benefit assignees.
- Exercise of an option to renew may be prevented if there are any subsisting breaches of tenant covenants. The tenant is likely to want to limit the situations in which this could arise.
- Renewal leases often continue on the same terms and conditions of the existing lease, other than passing rent. The option to renew clause must be excluded from the renewal lease, otherwise the tenant is granted a rolling right to renew in perpetuity - which, under the Law of Property Act 1922, is converted into a lease for 2000 years!
- If there is an existing rent deposit under the initial lease, a new rent deposit deed may be required for the renewal lease; this will depend on the terms of the original deed.
- There are always specific factors to consider based on the nature of the transaction, the particular property or the identity of the parties. The DAC Beachcroft team can ensure that this is dealt with correctly.

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