

## Bike Shops: Property Issues

In tandem with formulating your business plan and choosing a location for your bike shop, you will need to consider the commercial and legal aspects of your move into new premises. Perhaps you already run a bike shop and are looking to extend the shop due to increasing demand, or alternatively downsize to smaller premises.

If you are looking to move into new bike shop premises, what are the important issues which you should be considering and how can we help you address them in your favour?

**Heads of terms** - it is very important that you take specialist advice from an independent surveyor on the landlord's proposed lease terms so as not to delay your scheme and to ensure the terms for the deal you sign up to are not heavily biased in favour of the landlord, particularly in the present "tenant's market" where there are increasing amounts of vacant shop stock available for letting, giving you a strong negotiating position;

**Take advice from a specialist retail solicitor** - they will advise on what the lease will cover and how best to protect your position in the lease – for example, rent review provisions, lease length and if you will have the right to break the lease (with any pre-conditions for exercise of the break), your ability to sell on the lease and your repairing obligations, particularly potentially costly dilapidations liabilities when the lease ends;

**Fit out** – presumably you will be planning to fit out the shop before opening for trading so you may need to obtain planning consent from the local authority for the fit out works, together with landlord's consent for those works, and your solicitor will be able to advise you on how these points should be dealt with in the lease, in your favour. In addition, your solicitor should ensure that you are not penalised for your works by paying an uplifted rent at rent review, as a consequence of the works;

**Financing your move** – if bank finance is required, you will need to ensure that the banks conditions for securing the funding are dealt with promptly and that they do not delay your scheme. For example, the bank will probably want to see trading accounts, if your business has been running for a while or details of projected turnover, if a relatively new business, so you should provide relevant details to the bank as soon as possible.

**Rather than moving into new premises, perhaps you are looking to extend your current shop, to increase the area available for servicing bikes or simply to allow for more stock to be held in the store. What points do you need to be aware of?**

**Fit out works consents** – if looking to extend your shop which you occupy under a lease, it is likely you will need to obtain your landlord's consent before you can carry out your alterations, and you may also need to obtain planning consent from your local authority. Ensure you get early professional advice on both these issues from a specialist solicitor and perhaps also a surveyor and planning consultant to ensure that consents are obtained as soon as possible so as not to delay your proposed works;



**Surveyor/Solicitor** - get a good specialist surveyor and a good solicitor involved at an early stage. The surveyor will be able to agree terms with the landlord for documenting the fit out works and should ensure that you are not penalised for the works by paying a higher rent at rent review under the lease. Your solicitor should also check that there are no restrictions on the property title preventing you from extending the store, which will cost time and money to be resolved and which may delay your scheme.

**As an alternative to extending, perhaps you are looking to downsize from your existing bike shop leasehold premises – what issues do you need to consider to protect yourself/your business against your landlord?**

**Terminating the lease under a break clause** - if you can terminate your lease at a specified point because there is a break clause, you may have no continuing liabilities to your landlord. Check the notice you have to give, generally at least 6 months and whether the break clause has any conditions which you will need to satisfy for it to be valid. Normal conditions are payment of all money due up to the break date, and that you have vacated the property by the break date. More problematic is where the break clause is conditional on “performance of the tenant’s lease covenants”;

**Negotiating termination of the lease with your landlord** - if you can negotiate termination of your lease, you may have no ongoing liabilities to your landlord but he will try to get you to pay a fee for terminating, payment of his professional fees and payment for repairs and redecoration;

**Selling your lease to a new tenant** - finding a new tenant to take over your lease is usually the best way of realising any value it has but leases for fewer than three years often prohibit assignment or you may need your landlord’s consent – which usually cannot be unreasonably withheld. If you can assign the lease, you will usually have legal liabilities for all future payments owed by future tenants, or have to guarantee some or all of the next tenant’s payments. The landlord will also expect his professional fees in dealing with the grant of the consent to be met. Assignment negotiations can cost more and take longer than negotiations to terminate. First you have to find a new tenant, and may have to pay an agent to help. Second, you have to negotiate with both the new tenant and the landlord;

**Sub-letting the premises or part of them** - rental from sub-letting could cover part or all of your rent and leave you free to move but sub-letting will not get you out of the lease – you retain all your liabilities as a tenant and you have the additional burden of managing your sub-tenant. Subletting may not even be allowed – check the lease for restrictions on subletting – and you will almost certainly need the landlord’s consent.

**David advises clients in buying, selling, and financing commercial real estate, his clients range from major retail brands and private investment companies to national charities. David is also a regular cyclist.**



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