

# Is your surgery lease coming to an end?



GP practices are increasingly occupying their surgeries as leasehold tenants. It is a trend that has been happening for some time now, so many practices are approaching the end of their lease.

As a surgery lease is one of the most important and complex contracts a practice can enter into, it is important to plan ahead and take action early. Here are some of the key points to address in your plan:

## Questions to consider

### 1. What are the key dates for your lease?

It is vital that you are aware of and understand the key dates specified within your current lease. Make sure you diarise the lease expiry date and also the dates of any break clauses, so you can begin to plan at least 12 months in advance.

### 2. Do you wish to vacate the surgery?

The default position at the end of a lease will be for you to vacate the premises before the lease expiry date. If this is what you intend to do, you need to ensure you have somewhere to move to and that NHS England is prepared to fund the new premises and change your contract accordingly.

If you wish to close the practice when you vacate the premises, then you must give NHS England sufficient notice - which is six months under GMS contracts. You would then need to close the business, which could be a lengthy process and is likely to involve staff redundancies, as well as settling various business liabilities.

### 3. Do you wish to remain in the surgery?

If you wish to remain in the surgery your negotiating position will be affected by the wording in your current lease. If it includes 'Security of Tenure' under the Landlord and Tenant Act 1954, then you will have the automatic right to renew your lease on terms similar to those in your current lease (subject to certain conditions). However, many surgery leases will specifically exclude this. Regardless of whether you have security of tenure or not, you will need to negotiate a new lease with your landlord. Like any negotiation, it is important to understand the strength of your position, and to ensure that you negotiate in good time to secure yourself options. Bear in mind renewing a lease, can be a very different negotiation from a new occupation.

### 4. What happens if you do nothing?

Surprisingly, many practices continue to occupy a surgery after their lease has expired, but this can have serious implications and risks. Again, a lot will depend on the wording of your previous lease

and also any correspondence you have entered into with your landlord about your current occupation.

If you continue to pay rent and it is accepted as such, then it will probably hold that some form of landlord/tenant relationship exists. But beyond that you face a number of potential problems, such as:

- The risk that the landlord could seek to recover possession
- The possibility that you may have inadvertently consented to some onerous lease terms
- The risk that you will be prejudicing your rent reimbursement.

Furthermore, any joining or leaving partner will want to understand any risks they are taking on, or be confident that they have fully left their obligations behind. These may be difficult to quantify in this situation.

### **In summary**

There is an old saying that the 'L' in lease stands for liability. As some of these liabilities only crystallise around the lease expiry date, it's important to understand what your obligations are. Early planning for your lease expiring will both reduce your risks and improve your negotiating position. We strongly advise that you seek specialist advice early in the process.

For more information, please contact Daphne Robertson on **01483 511555** or email

[d.robertson@drsolicitors.com](mailto:d.robertson@drsolicitors.com)