

ASSIGNATION

Guidance Notes



Introduction

This Assignment can be used for a simple assignment of a lease and also provides for variations to the lease to be made (see Clause 5) where the Landlord has agreed a change of use for example.

The Landlord's consent to the assignment can be evidenced in the Assignment (see Clause 8) or if the Landlord does not wish to be a party to the Assignment its consent can be evidenced separately by letter of consent. If there are to be variations of the lease the Landlord will need to be a party to the Assignment.

The Assignment proceeds on the basis that the Assignor will be released from all liability to the Landlord with effect from the Date of Entry. The Assignee takes on liability for all tenant's obligations under the Lease both before and after the Date of Entry but will have a personal right against the Assignor for any liability arising as a result of a breach of obligation prior to the Date of Entry, although this is restricted to monetary obligations as explained below.

1. Preamble

If the Landlord is not to be a party to the Assignment delete the wording in square brackets "[with consent of the Landlord]" where it appears after the designation of the parties and amend the definition of Parties appropriately.

If there is no Guarantor delete the definition of Guarantor, paragraph (C) in the preamble and any other consequential references.

2. Clause 1 Definitions

Delete those definitions that do not apply to your transaction eg Guarantor, Price, Schedule and Sub-Leases.

Although the PSG does not consider it necessary, you can if you wish refer to all the letting documentation, in which case the definition "Lease" should be amended accordingly and the letting documentation listed in the schedule.

3. Clause 2 Assignment

Part 5 of the Land Reform (Scotland) Act 2016 enables a community body to make an application to Scottish Ministers to purchase land for sustainable development and to take an assignment of the tenant's interest in the land. If a Part 5 community body makes such an application the tenant is prohibited from assigning the lease, and from taking any action, such as marketing, with a view to assigning the lease from the date on which the community body's pending application appears on the Register of Applications by Community Bodies to Buy Land (RACBBL). If however one of the exempt categories, such as transfer by way of

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gift, or between group companies, applies (for full list of exempt categories see Regulation 9 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing)(Scotland) Regulations 2020), then the assignation transferring the tenant's interest in the land (if presented for registration after the community application appears in the RACBBL) must contain a declaration to the effect that it is exempt, and specify the relevant category that applies, using the wording in the Clause 2.2.

4. **Clauses 3 and 4 Assignee's Obligations and Indemnity by Assignor**

The Assignee takes on full liability for the performance of all of the tenant's obligations under the Lease in Clause 3 but is indemnified by the Assignor for any monetary payments arising prior to or at the Date of Entry. The PSG does not consider it appropriate to extend the Assignor's indemnity beyond monetary obligations, as issues such as breach of the lease by the Assignor, surveys etc. should be dealt with in the contract between the Assignee and the Assignor, and it is not appropriate (nor indeed expected in practice) that the Assignor should have any future contingent liability for, for example, dilapidations arising prior to the Date of Entry. The Assignor is discharged from all liability to the Landlord from the Date of Entry.

5. **Clause 5 Variations**

If the Parties have agreed that there should be any variations to the Lease (for example change of use) full details will need to be set out in the Schedule.

6. **Clause 6 Costs**

Amend 6.1 and 6.4 by the deletion of wording in square brackets as appropriate depending on who is to pay the Landlord's costs and whether the Assignation will be registered in the Land Register.

When the Lease is a lease on which LBTT was paid the tenant must make an additional LBTT return on an assignation of the Lease. This return will refer to the period of the Lease from the date of the last LBTT return to the Date of Entry under the Assignation. If any additional LBTT arises for that period, this should be the outgoing tenant's (Assignor's) liability.

Where the Assignor is paying the Price, no LBTT will be payable and Clause 6.3 should be deleted. However, if the Assignee is paying the Price, LBTT will be payable by it and Clause 6.3 should remain.

7. **Clause 8 Landlord's Consent**

Delete if the Landlord is not a party to the Assignation.

