

LETTER OF CONSENT TO ASSIGNATION

Guidance Notes



Introduction

This Letter of Consent is for use where you are acting for the Landlord in consenting to the Tenant assigning its interest in a Lease to another party.

The Landlord may require a guarantor for the Assignee or a rent deposit from the Assignee, and provision is made for that in the Letter of Consent.

1 Condition 1 Definitions

It is assumed (and recommended) that the draft Assignment is attached to the Letter of Consent. If this is not the case amend the definition of Assignment appropriately.

Delete those definitions that will not apply in your transaction eg Deposit Agreement, Guarantee, Guarantor, Head Landlord and Heritable Creditor and insert any additional definitions required.

Although the PSG do 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.

2 Condition 2 Tenant's Confirmation

This is designed to cater for the situation where there is some side agreement which alters the financial terms of the arrangement, having regard to case law (mostly English) on this matter.

3 Condition 3 Landlord's execution and delivery of assignment

If the Landlord does not want to be a party to the Assignment this Condition can be deleted but be aware of the following points if you delete this Condition:

- the Landlord will need to be satisfied that there are no arrears of rent before the Letter of Consent is issued;
- if third party consents (such as head landlord or heritable creditor consent) have not been obtained before the Letter of Consent is issued you will need to include Condition 6 making the consent to assignment conditional on those third party consents being obtained within a certain timeframe;
- unless the Landlord's legal fees have been paid before the Letter of Consent is issued the wording in square brackets in Condition 8 (Costs) giving a time limit for payment of the Landlord's costs must be included.

If Condition 3 is to remain in the Letter of Consent delete Condition 6 and any of Conditions 3.2.1-3.2.3 which do not apply to your transaction.

Potentially, both the Assignor and the Assignee will have an obligation to make an LBTT return. If a premium is payable by the Assignee to the Assignor and it is liable to LBTT, the

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Assignee will need to make a return. The Assignor will have to make an LBTT return when the Lease is assigned if the provisions of LBTT (Scotland) Act 2013 Schedule 19 Part 4 Paragraph 11 apply (unless the Lease is a lease on which SDLT was paid) and pay any additional LBTT due.

Because of these LBTT requirements, we recommend that the Assignor should be the last to sign the Assignment giving them an element of control over the triggering of the relevant day for LBTT purposes. As the Assignor will always have to make a return when the lease is liable to LBTT, it is up to the parties to make appropriate arrangements when both the Assignor and the Assignee have to make LBTT returns. If the Landlord was to be the last to sign and then delayed the return of the signed assignment, the Assignor, or the Assignee could run the risk of submitting their LBTT return and any payment late.

4 Condition 4 Intimation of assignment

The Assignment will not be binding on the Landlord until it is intimated. This Condition entitles the Landlord to withdraw the consent if the Assignment is not intimated within a certain period of time. Consider what is a reasonable length of time in the circumstances of your transaction. It is important from the Landlord's point of view that the consent is not open ended.

5 Condition 5 Assignment to be registered

In most cases the Assignment will be registered in the Books of Council and Session.

Consider if the Assignment needs to be registered in the Land Register as well. If the Lease was for a term of 20 years or less the Assignment will need to be registered B of C & S only.

If the Lease is registered in the Land Register the Assignment will need to be registered in the Land Register for the Assignee to acquire a real right. An assignment of a lease which is recorded in the Register of Sasines will trigger first registration in the Land Register.

Under the Land Registration etc (Scotland) Act 2012 Act, if a lease recorded in the Register of Sasines is assigned and the Landlord's title is recorded in the Register of Sasines, the assignment will trigger automatic registration of the Landlord's title to the extent of the premises let.

When submitting an assignment for registration which triggers automatic plot registration, the onus is on the applicant (ie the Assignee) to ensure the application contains sufficient information to enable the Keeper to make up the title sheet for the Landlord's previously unregistered plot. The Assignee's solicitors must send the Keeper the documents listed in this [checklist](#). The Registers have advised that copies only of the Landlord's title deeds will suffice, but that any plans must be coloured copies.

As there is no direct contractual link between the Assignee and the Landlord we have included a new condition 5.4 providing that, where automatic plot registration applies, the Landlord will deliver their title deeds to the Tenant to enable the Keeper to create a title sheet to disclose the Landlord as registered proprietor of the Property. Since the obligation to provide the title deeds is triggered by the Tenant's decision to assign the lease it is appropriate that the cost of providing the title deeds is met by the Tenant.

There is no additional registration fee for the automatic plot registration.

The application form which the Assignee will submit to register the Assignment will include answers to questions which relate to the Landlord's title. Accordingly, the Landlord will want to review the application form to ensure that the information provided in the form is correct. Condition 5.4.2 provides that the draft application form must be sent to the Landlord for approval. It is for the parties to agree a reasonable timetable for provision of the draft application form and approval by the Landlord prior to the date of entry under the Assignment.

The Landlord will want to know when its title has been registered. As notifications from the Registers of Scotland will generally be by email Condition 5.4.3 provides that the Assignee must include the Landlord's email address in the further information section of the application form.

The Landlord will want all title documents returned to it when the registration process has been completed particularly if these documents relate to a larger property of which the premises let form part and Condition 5.4.4 deals with this.

6 **Condition 6 Suspensive condition**

Delete if not applicable or if Condition 3 is to remain in the Letter of Consent.

7 **Condition 8 Costs**

The Landlord will want to ensure that all its fees and costs are paid promptly. In view of the member firms' experiences of recovering such fees and costs from third parties in situations such as this, the PSG recommends that the Letter of Consent is not issued until all such fees and costs have been paid.

There is no mention of LBTT and registration dues in this Condition because liability for LBTT will rest with the appropriate tax payer and it is for the Assignor and Assignee to agree who will pay the registration dues on the Assignment.

8 **Miscellaneous**

Any additional conditions (for example conditions relating to alterations proposed by the Assignee) can be inserted at the end of the Letter of Consent before Condition 9.

Attach the agreed form of Assignment and Guarantee or Deposit Agreement to the Letter of Consent if required.