

LETTER OF CONSENT TO SUBLEASE

Guidance Notes



Introduction

This Letter of Consent is for use where you are acting for the Landlord in consenting to the Tenant sub-letting its interest in a lease to another party.

1. **Condition 1 Definitions**

Delete those definitions that do not apply to your transaction, e.g. Head Landlord, Heritable Creditor etc.

If the sublease is of part only of the premises let under the lease, you will need include the additional definition of Larger Property (being the whole of the premises let by the Tenant under the Lease).

Although the PSG does not consider it necessary, you can if you wish refer to all the letting documentation, in which case the definition of "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 Terms of Sublease**

The principal commercial terms of the sublease should be inserted here. Clause 3.2 is particularly important: some landlord's solicitors will not review the draft sublease and will leave the subtenant's solicitors to ensure that it complies with the lease, whereas other solicitors do not take this view. The PSG's preference is for the former approach. Bear in mind, though, that, if there is an irritancy protection agreement or similar arrangement in terms of which the Landlord may come into a direct contractual relationship with the Subtenant, the Landlord will need to review the Sublease.

4. **Condition 4 Rental evidence**

This is normally a requirement of most landlords in granting consent to subleases.

5. **Condition 5 Sublease to be registered**

Under the Land Registration etc (Scotland) Act 2012 Act, if a sublease is granted and the landlord's title is recorded in the Register of Sasines, the grant of the sublease will trigger automatic registration of the landlord's title to the extent of the premises sublet.



When submitting a sublease for registration which triggers automatic plot registration, the onus is on the applicant (ie the Subtenant) 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 Subtenants' solicitor must send the Keeper the documents listed in the checklist on the one shot rule page on the Registers website. 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 Subtenants and the Landlord we have included a new Clause 5.4 providing that, where automatic plot registration applies, the Landlord will deliver its 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 grant the Sublease 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 Subtenant will submit to register the Sublease 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. Clause 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 sublease.

The Landlord will want to know when its title has been registered. As notifications from the Registers of Scotland will generally be by email Clause 5.4.3 provides that the Subtenant 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 the Larger Property of which the Property forms part and Clause 5.4.4 deals with it.

6. **Condition 6 Suspensive condition**

Delete if not applicable.

7. **Condition 7 No possession**

This is a requirement which most landlords will want to impose.

8. **Condition 8 Costs**

This wording should be adapted to suit the circumstances. The Landlord will want to ensure that all its fees and costs are paid promptly and, 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.