

GUIDANCE NOTES FOR PROTOCOL FOR APPLICATIONS FOR CONSENT TO ASSIGN OR SUBLET (THE ALIENATION PROTOCOL)

(Based on the Property Protocols' Alienation Protocol
www.propertyprotocols.co.uk)



1. Introduction

- 1.1 This protocol applies to commercial property situated in Scotland.
- 1.2 This protocol relates to applications by a tenant for its landlord's consent to the assignment or subletting of leasehold premises, where such a transaction is prohibited under the terms of the lease save where the landlord has given prior consent.
- 1.3 This protocol is not intended to be an exhaustive or mandatory list of steps or procedures to be followed in connection with all applications, regardless of the circumstances. Those will be determined by the facts of each case. It is also not intended to be an explanation of the law. In deciding the exact steps and procedures to be adopted, regard should be had to the circumstances of the tenant's application, and the law prevailing at that time.
- 1.4 Commercial leases in Scotland are not subject to the provisions of section 19 of the Landlord and Tenant Act 1927. Accordingly, unless specific provision is made in the lease to the effect that the landlord must act reasonably in considering a request for consent, then there is no legal requirement for the landlord to act reasonably. Most leases will provide, in one form or another, for the landlord to act reasonably, but the tenant should check the provisions of the lease before making application to the landlord.
- 1.5 Section 1 of the Landlord and Tenant Act 1988 does not apply to Scottish Commercial leases. However, in the spirit of co-operation which it is anticipated the parties will adopt, if they have agreed to use the Protocol, it is expected that both parties will respond to the other within a reasonable time.

2. Overview of protocol - General Aim

- 2.1 This protocol is intended to improve the communication between landlord and tenant and establish a timetable for the exchange of information relevant to the tenant's application and the landlord's decision. Compliance with the protocol should enable tenants to provide enough information in their application to allow the landlord to decide whether it is prepared to consent to the proposed transaction and whether it would be unreasonable to refuse consent. Compliance with the protocol should ensure that applications are dealt with within a reasonable timeframe.
- 2.2 It is intended that parties following this protocol:
 - (a) will avoid arguments as to the information and documentation and information that should form part of any application for consent to the assignment of the tenant's lease or the grant by the tenant of a sublease;
 - (b) will avoid disputes as to the period of time within which the landlord should give its decision in response to an application for consent;
 - (c) will, in case of disputes as to any matter arising, be able to have such disputes decided swiftly by an experienced tribunal with recourse to the courts being an option of last resort only.

Adapted from the "Explanatory Note to Protocol for Applications for Consent to Assign or Sublet (the Alienation Protocol)" see – www.propertyprotocols.co.uk

