

# LETTER OF CONSENT TO ASSIGNATION

## Guidance Notes



### Introduction

This Letter of Consent is for use where you are acting for the Landlords in consenting to the Tenants assigning their interest in a Lease to another party.

The Landlords may require a guarantor for the Assignees or a rent deposit from the Assignees, 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, Guarantors, Head Landlords and Heritable Creditors 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 Tenants' 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 Landlords' execution and delivery of assignment

If the Landlords do 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 Landlords 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 landlords' or heritable creditors' 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 Landlords' 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 Landlords' costs must be included.

If Condition 3 is remaining 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 Assignors and the Assignees will have an obligation to make an LBTT return. If a premium is payable by the Assignees to the Assignors and it is liable to LBTT, the Assignees will need to make a return. The Assignors will have to make an LBTT return

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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 Assignors 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 Assignors 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 Assignors and the Assignees have to make LBTT returns. If the landlords were to be the last to sign and then delayed the return of the signed assignment, the Assignors, or the Assignees could run the risk of submitting their LBTT return and any payment late.

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#### **Condition 4 Intimation of assignment**

The Assignment will not be binding on the Landlords until it is intimated. This Condition entitles the Landlords 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 Landlords' point of view that the consent is not open ended.

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#### **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 Assignees 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 landlords' title is recorded in the Register of Sasines, the assignment will trigger automatic registration of the landlords' 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 assignees) to ensure the application contains sufficient information to enable the Keeper to make up the title sheet for the landlords' previously unregistered plot. The assignees' solicitors must send the Keeper the documents listed in this [checklist](#). The Registers have advised that copies only of the landlords' title deeds will suffice, but that any plans must be coloured copies.

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

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

The application form which the assignees will submit to register the Assignment will include answers to questions which relate to the landlords' title. Accordingly, the landlords 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 landlords for approval. It is for the parties to agree a reasonable timetable for provision of the draft application form and approval by the landlords prior to the date of entry under the Assignment.

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

The landlords will want all title documents returned to them 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 remaining in the Letter of Consent.

7 **Condition 8 Costs**

The Landlords will want to ensure that all their 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 recommend that the Letter of Consent is not issued until all such fees and costs have been paid.

There is no mention of SDLT and registration dues in this Condition because liability for SDLT will rest with the Assignees (who are not a party to this Letter of Consent) and it is for the Assignors and Assignees to agree who will pay the registration dues on the Assignment.

**Miscellaneous**

Any additional conditions (for example conditions relating to alterations proposed by the Assignees) 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.