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**CHARTERED
SURVEYORS**
IRELAND

A Guide to Property for SMEs



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Introduction

We are delighted to present the Society of Chartered Surveyors Ireland (SCSI) and Dublin Chamber of Commerce SME Guide to Property.

This SME Guide to Property provides a comprehensive resource for SMEs on all aspects of property that impacts their business. The guide is intended for everyone from budding entrepreneurs starting a new business through to existing business owners keen on expanding.

As the economic outlook improves, ensuring that companies can also expand and create jobs is a high priority.

This guide contains a range of information on topics including leasing a property, commercial rates and rent reviews.

An SME that better understands their rights and responsibilities with regard to these matters will be a better business.

The guide contains a succinct summary of the most important legislation currently affecting business owners such as The Land and Conveyancing Law Reform Act, 2009 and its implications for rent reviews, as well as the recently introduced Building Control (Amendment) Regulations 2014 and its connotations for commercial property.

The guide will also help with decision making in relation to common questions that arise relating to property, including service charges, tax allowances, subleasing and assignments, planning permission and dilapidations.

The importance of competitiveness and being fully informed in today's complex market is more important than ever. This guide reflects the commitment of both the SCSI and Dublin Chamber to their members and also to supporting Ireland's competitiveness and growth.

We hope that you will find this guide useful to your business.



Pauline Daly
President
Society of Chartered Surveyors Ireland



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Introduction

How can this guide help me?

This property guide is designed to help small business owners to manage their property efficiently and run their business more profitably. Decisions about premises – buying, leasing, maintaining or extending can be daunting for business entrepreneurs whose main energies are focused on making a success of the business itself. Finding the right solutions to your property needs and dealing effectively with the many issues that can occur while you are in occupation is integral to running a successful business.

This guide provides information to support you with the more common decisions and actions that you may need to take, from acquiring a lease to challenging a dilapidations claim. Other vital property-related issues such as valuations, planning permission and the commercial rates system are also covered.

Many of the topics included here can be highly complex and a guide such as this can only provide an outline of the key points. It is not a substitute for the depth of knowledge and experience that a professional surveyor – working in some instances with your solicitor or accountant – can provide. It should help you to appreciate when you need to call in the professionals. This guide will give you the necessary background so that you know what to ask your professional advisor and understand more fully the information and advice that you are given.

This property guide is intended for small businesses across Ireland. For further copies of this guide, visit the Society of Chartered Surveyors Ireland (SCSI) website at www.scsi.ie



How can a professional surveyor help?

Members of the SCSi are seen by many as the 'go to' professionals in the property and construction industry. Their training and experience qualifies them to help on all aspects of your property and construction affairs. Some offer a range of property skills and others specialise in particular areas such as valuations, rent reviews, building surveys, construction contract administration or project management to name a few.

Given that there are many types of Chartered Surveyors with different specialties, the SCSi will be able to help you find the most appropriate Chartered Surveyor for your property and construction affairs. Alternatively you should consult the "What is a

Chartered Surveyor" page below which outlines each type of Chartered Surveyor and their respective skills and competencies.

SCSi members can be recognised by the letters AssocSCSi, MSCSi or FSCSi after their name. Membership of the SCSi is more than a guarantee of levels of professional training and experience. The SCSi ensures that its members abide by strict rules of conduct including rules around handling Client Money. As an ultimate safeguard, all SCSi members are required to carry professional indemnity insurance which protects clients in the unlikely event of professional negligence.



What is a Chartered Surveyor?

Chartered Surveyors are highly trained and experienced professionals who are typically employed throughout the construction, land and property sectors and will usually specialise in one of the following areas:

Construction

Quantity Surveyor

Advises on the costs of developing all types of buildings and infrastructure.

Building Surveyor

Carries out building surveys and provides management and design consultancy services.

Project Management Surveyor

Manages complex building and infrastructural projects.

Land

Planning & Development Surveyor

Manages the proposals to develop new or refurbish existing buildings.

Geomatics Surveyor

Maps the built and natural environment to provide accurate spatial data which facilitates planning, development and conservation.

Minerals Surveyor

Provides expertise in the full life cycle of mineral development.

Rural Surveyor

Values, manages and sells agricultural land including forestry.

Property

Residential Agency Surveyor

Provides professional expertise in the valuation, management, letting and sale of residential property.

Commercial Agency Surveyor

Provides professional expertise in the valuation, management, letting and sale of commercial property.

Valuation Surveyor

Provides professional expertise in valuations, acquisitions, disposals, investments and rent reviews for all types of property.

Property & Facilities Management Surveyor

Provides professional management services for residential and commercial multi-unit developments and facilities.

Arts & Antiques Surveyor

Provides professional expertise in the valuation and sale of arts and antiques





Chapter 1:

Finding the right premises

Your business will be easier to run – and more profitable – if you find the right premises, but unless you approach the search in a logical and organised way and take advice where necessary, you risk overlooking some points which may turn out to be vital at a later stage.

Where should I look for details of available premises?

SCSI members who handle the sale and letting of commercial premises will be able to help you. You can get a list of SCSI members in your local area by contacting the SCSI or by using the 'Find a Surveyor' search on www.scsi.ie. You should also get a feel for your chosen location with some prior online web research; there are several good generic property websites. Tour the chosen location to spot agents 'For Sale' or 'To Let' boards and read local newspapers or specialist business newspapers. The national newspapers run a commercial premises column at least once a week.

What is the order of priorities in deciding on premises?

Think the process through logically. The best sequence may be:

- Location. If you get this wrong there is no way of correcting your mistake except by moving again! If your business is in manufacturing, ease of access to sources of raw materials and to your markets may be essential. If you are running a shop, it should clearly be in a location where the public will notice it and find it easy to visit. For cost reasons you may have to accept some compromise.

- You need to consider your **business strategy**, the number of people you will be employing, the processes used in the business and the machinery required. The type and location of property required for a manufacturing business with heavy plant will be different from that required for a software or distribution business. Consider also your ongoing plans. Should you ensure at the outset that there is space for expansion or will you rely on a move to larger premises at a later date as the business expands? Think about the quality of the workspace environment and how this may affect staff and their productivity. All of these considerations need to be thought through before you make a final choice about your premises.

- Next, prepare a **specification** of the premises you want. Sketch out a plan on graph paper, detailing your requirements. From this you can calculate the floor area you need. Review your car parking needs, consider whether you require loading facilities, ascertain your utility requirements - what power supply will your business require and will you need diversity in telecommunications?

- The other key decision you have to make at the outset is whether you will be **purchasing or leasing** the premises.

- Calculating how much you can afford to pay in outgoings on the premises will determine whether you buy or lease. In addition to rent or mortgage repayments you will need to allow for general rates, water rates, service charges for maintenance and cleaning of common areas, and insurance of the building.

Armed with this information, you will be able to give a Chartered Surveyor a succinct summary of what you are looking for. The Chartered Surveyor you retain to advise you will provide independent and professional advice on the size, type, form of tenure and location of premises that best suit your needs.

What are the pitfalls and safeguards when taking on premises?

Check the state of repair. Your Chartered Surveyor plays a key role here and will be able to advise you on the repair outlays that you are likely to face. If you are leasing the property, you need to be clear who is responsible for repairs: the landlord or you (the tenant). Check that the property has planning permission for your intended use and that there are no restrictions on your ability to run your business (e.g. a limitation on working hours or noise emissions). If you need to obtain planning permission for your use, remember to allow a minimum of 12 weeks (and, unfortunately, sometimes a lot longer) for the application to be processed. Altering services such as electricity and gas can be extremely expensive, so always ensure that the property has adequate mains services and that they are in good order. Ensure that the premises comply with health and safety requirements, including fire regulations and access requirements under disability legislation.

In checking the proposed lease with your Chartered Surveyor and solicitor, pay particular attention to the clauses relating to service charges, rent reviews, sub-letting and assignment, repairing and decorating obligations and personal guarantees. Also make sure you know whether you will have security of tenure.

You may wish to alter or adapt the building to suit your requirements. Almost certainly, you will have to obtain your landlord's approval for these works before carrying them out and you should, therefore, allow sufficient time to secure consent.

If you are taking over a building which has been previously occupied, make sure you understand which fixtures and fittings will be removed when the previous occupier leaves.

If your business is a start-up operation, you might consider finding premises which you can occupy under a licence rather than a lease. Another option, in the case of office accommodation, is to look for serviced space. Such arrangements allow you to enter into a service contract rather than a lease, which may provide you with workstations, secretarial services and so on as well as the office space itself. Such contracts offer maximum business flexibility but may become costly as the business needs to expand.

Is there any financial help for businesses setting up in new premises?

Grants and other incentives might be available from your local Enterprise Board or other government agencies. Contact your local authority who will be able to advise you.

How long should I allow for finding premises?

Plan well in advance. It will vary with the circumstances but, as a rough guide, allow between three and six months. It is vital that you are in control of the timetable, so that you are not forced into hasty decisions.





Chapter 2:

Buy or lease?

When deciding on new premises a fundamental business decision will be to either buy or lease your premises. There are financial and operational advantages to both options, so your decision must be weighed up carefully.

What is my starting point?

Start with your business itself. Is it a mature business or is it a start up and do you expect it to remain roughly at its present size? Do you expect, if all goes well, that it will expand significantly in the years ahead? Try to build a picture of where you expect the business to be in five years' time.

Leasing is generally more flexible than buying, at least in the case of a short lease. If your business is currently small but you expect it to grow, leasing might be the preferred option. You can take a lease or even a licence on premises that satisfy your present space requirements.

As your space needs increase you can move on to a larger building without the hassle of having to sell your original premises. With industrial buildings in particular, design trends change quite a lot and if the building that you lease becomes obsolete you can move to one that meets your current requirements. However, there is always the possibility of buying a building which can be extended or adapted if you find you need more space in the future.

Some types of businesses require a large amount of plant and equipment in the building, with high installation costs. As you will want to write off these costs over many years, you will not want to change premises at frequent intervals. In this case, buying may make more sense than leasing. If you do take a lease, it will need to be a long one.

If you are in the retail or leisure business, will you require scope to expand, will you be establishing goodwill by operating from your chosen premises?

Would I have more freedom of action as an owner?

Aside from the question of moving premises, you will generally have more freedom of action as an owner than a tenant. You would not need to obtain a landlord's approval (with the attendant time delays and costs) for changes that you want to make. It is more likely that you would be able to extend the building. You will not be faced with the administrative inconvenience of negotiating rent reviews, of renewing your lease or of arguing dilapidation claims if you move out.

On the other hand, many of the same restrictions will apply whether you buy or lease. You will still need to maintain and insure the building, whether it is for yourself or a landlord. You will still be subject to the same external constraints, like the need for planning permission when the occasion arises.

Which makes more financial sense: owning or leasing?

This is where the two-way arguments are at their strongest. Many larger businesses consider that their capital is better employed (and will earn higher returns) in the business itself than if it is tied up in property ownership. Consequently many businesses may tend to lease their buildings rather than own them. Some may even dispose of existing buildings that they own via a sale and leaseback (this is where the property is sold to an investor, but the occupier remains in occupation as a tenant, subject to a lease).

In addition to business capital requirements, your decision will be influenced by your anticipation of medium to long term growth in the property market. Should you safeguard the business against escalating rents and avail of capital appreciation over the long term?

If you own your property, you will get the benefit of any capital appreciation and will own an asset at the end of the day. If the building increases substantially in value, you might be able to borrow against the increased value in the future, which could extend your financing options. You will not have to worry about big increases in your occupation costs following rent reviews. You should also discuss the issue with your accountant as there may be some tax implications flowing from the decision as to whether to lease or buy.

How would I finance a purchase?

A commercial mortgage is the most common form of finance for the purchase of a building, particularly of the type likely to be used by a smaller business. Such mortgages are obtainable from a variety of lenders, including the main high street banks and some building societies. You may compare the terms on offer yourself or enlist the help of a specialist mortgage broker. The terms and the cost will vary quite a lot, depending on the options that you choose.

In costing out commercial mortgages, remember the additional costs as well as the interest payments and capital repayments you will have to make. There will be valuation and legal costs at the outset and if you go via a broker there will be his or her fee to consider. The lender may charge an up-front fee for setting up the loan and there is the cost of any required insurance. There may be penalties for early repayment: look carefully at these before you make the decision.





Chapter 3:

Taking a lease

Entering into a lease contract on a premises means that you are probably entering into one of the most significant financial commitments that your business will make. There is a lot of preparatory work that both you and your professional advisers need to have done before you reach the lease contract stage. You need to ensure that the lease matches your requirements as closely as possible and that you understand any possible ramifications of your contractual obligations.

Leases can be complex documents with a format and use of legal language which might be difficult to comprehend by people not routinely involved in the property business. This is why it is essential to call on the professionals – your Chartered Surveyor and solicitor – at the earliest possible stage.

What is a lease?

A lease is a binding contract in law which sets out the terms and conditions of the tenancy agreement between landlord and tenant. It defines the rights and obligations of both parties. It is therefore enforceable – you cannot simply walk away from a lease. However, certain aspects of the relationship between landlords and tenants are also defined by law. Following the issuing of the ‘Heads of Terms’ or ‘summary of the negotiated terms’, a first draft of the lease will usually be drawn up by the landlord’s solicitor and circulated to all parties for discussion.

New lease or existing lease?

The pattern of property tenure may be complex and is not always a simple matter of a tenant taking a lease

direct from the property owner (the freeholder). Take the following situation:

- An investor owns the freehold of the building.
- A tenant takes a lease from the freeholder.
- A second tenant later takes an assignment of this lease from the original tenant, thus becoming the assignee and assuming the responsibilities of the original lease.
- The assignee later grants a sub-lease over parts of the building that are surplus to requirements to a sub-tenant.

In practice the chain may be considerably more complex than this. Needless to say, nobody down the chain can grant a lease longer than his or her own lease.

If you, as a prospective tenant, are taking a lease on a building you might be negotiating a new lease with the freeholder. On the other hand you might be entering the chain lower down and taking an assignment of an existing lease, or perhaps a sub-lease. With the new lease you should be able to negotiate the terms to match your requirements (though you will not necessarily get everything you want!). With an existing lease you will be bound by the conditions that it already contains and you have to decide before signing whether you can live with these or not unless you manage to negotiate revised terms with the landlord, which will then be incorporated in a Deed of Rectification.

These complexities emphasise the need for professional advice, as no two situations are identical. What follows is geared to a tenant negotiating a new lease, but most of the same considerations apply when assessing the suitability of an existing lease that you are thinking of acquiring.

Is there such a thing as a standard lease?

Subject to overriding legal requirements, it is up to the landlord and tenant to agree the lease terms. However, there are certain matters that will crop up in almost all leases and you will be guided by your retained property professional advisers.

The landlord and his or her advisers will probably have a pretty clear idea of the form of lease they would like and the main conditions. You, as a prospective tenant, may want to negotiate for changes on specific points. Your bargaining position with the landlord will depend on a number of factors, including the state of the property market at the time. This is where your Chartered Surveyor's expertise will be invaluable.

How long should a lease run?

Again, this is up to the parties concerned to negotiate. In the case of longer leases there will often be provisions for the rent to be adjusted at intervals of, say, three to five years. The wording of this rent review clause in the lease is very important.

The lease length is the period during which you may occupy the property and are liable for rent. It is important to realise you will be liable to the landlord throughout the length of the lease for rent and to pay outgoings such as rates. This liability will only end if you assign the lease onto someone else, with the landlord's agreement and if there are residual personal guarantees attached to the lease.

What is security of tenure?

You should understand that unless the lease contains a written agreement to the contrary, a tenant of business property is protected by the Landlord and Tenant (Amendment) Acts 1980 and 1994. The tenant is entitled to a new lease, on terms which the parties agree or which a court will decide if they can't. There are occasions when this will not apply, and it is important to take legal advice.

Do I always have security of tenure?

No. Short term leases will generally not confer tenancy renewal rights. Longer term leases of five years plus, will generally confer tenancy renewal rights under the Landlord and Tenant Act 1980.

Longer term leases will not confer lease renewal rights if the tenant had from the outset waived such rights under the Civil Law (Miscellaneous Provisions) Act 2008.

Where rights to a new tenancy exist, negotiation with the landlord typically follows and in the absence of an agreement being reached, the matter is referred to the courts to deal with and set the new terms. The landlord might legitimately oppose your application for a new lease on certain limited specific grounds, for example, if there are advanced plans to redevelop the property or it is claimed that you had consistently breached the terms of the old lease.

What are the repairing and upkeep obligations?

The clauses in the lease relating to redecoration and repairs are very important, particularly when you are leasing an older building. Normally as the tenant, you will be responsible for internal redecoration and repairs, however in some cases and almost always in the case where a longer term lease is granted, you may also be responsible for external repair and general upkeep.

The requirement to repair a property probably includes an obligation to undertake any repairs necessary at the time you sign the lease. So be very wary if you are planning to lease a building that is already in disrepair. An obligation to keep a property in repair requires the tenant to put it in repair.

It is vital to have the premises surveyed by your Chartered Surveyor at the outset. He or she will be able to advise on the scale of liability that might be involved. You may be advised to reach agreement for certain works to be carried out by the landlord at the

time that the lease is granted, alternatively you may agree at the lease contract stage that certain items of repair work are to be excluded as a tenant obligation. Towards the end of the lease, the landlord may serve notice on you – known as a ‘schedule of dilapidations’ – to carry out specified repairs. This is an area that frequently causes conflict between the contracted parties. To minimise disputes we would advise that you engage a Chartered Surveyor at the outset, to prepare a "schedule of condition" which should become part of the lease contract.

May I carry out alterations to the building?

The lease will probably prohibit you from carrying out structural alterations or building extensions but may allow you to make internal alterations – such as partitioning – with the landlord’s consent. You may, however, be required to remove any changes you have made internally and return the premises to its original state (**reinstate** them) at the expiry of the lease, assignment or indeed early termination by way of exercising a lease break option.

Who insures the premises?

Broadly, there are two different considerations involved: who arranges the insurance and who pays the premiums. Normally, the tenant will pay the premiums in one form or another, even if the insurance is arranged by the landlord. Most tenants will also want to insure against disruption and loss of profits should the building become unusable following a fire or other incident.

Am I restricted in my use of the building?

Yes, you will be subject to user restrictions under existing planning permission, Building Regulations and fire certificates. The lease itself may impose further restrictions on use to curtail insurance costs or for example to maintain an optimum balance of different category retailers in a shopping centre. A lease with strict conditions of use may be difficult to assign or sub-let.

How is the rent established at the outset?

It is up to landlord and tenants and their advisers to agree the starting rent before the lease is signed. However, this rent may subsequently be reviewed at intervals. The expertise and market knowledge of your Chartered Surveyor is vital in agreeing a rent because they will know the level of rents that have been achieved for similar recent lettings in the area and can advise you on what figure is reasonable. Sometimes it may be possible to negotiate some form of rent-free period or other tenant inducements at the beginning of a lease, again your Chartered Surveyor would be aware of prevailing market practices and will advise you accordingly.

However, the rent cannot be viewed in isolation without considering the other terms of the lease. You should, for example, expect to pay more if the landlord takes responsibility for repairs than you would do if you were responsible for them.

The lease will state the payment terms for the rent. This is often quarterly in advance although other alternatives such as monthly payments could be considered. There will be penalties for late payment and the lease normally allows the landlord to repossess the premises if you default on the rent.

Will the landlord require a guarantee for the rent?

Particularly if your business is a start up or similar small entity, the landlord may insist on a third party guarantee for the rent and the other obligations of the lease. If you are asked to provide a personal guarantee, be aware of the financial implications. If your company is liquidated, the landlord could have a claim on your home and other personal assets. You also need to be clear whether any guarantees would cease to apply if the lease was subsequently assigned. Ensure, if you can, that any guarantee lapses on assignment. Your Chartered Surveyor will discuss the options and explore ways to limit your exposure by restricting the terms of the guarantee to be agreed.

What happens at the rent review point?

Rent reviews are a topic on their own and you should read **Chapter 9 Rent reviews**. It is when you sign a new lease or take an assignment of an existing lease that you agree to a certain pattern of rent reviews in the future, so you need to understand the implications at this stage.

Traditionally, longer leases will provide for the rent to be reviewed every three, four or five years during the life ('term') of the lease. In the case of existing older leases, the review clause could dictate an 'upward only' direction, a practice which is prohibited in new leases under the Land and Conveyancing Law Reform Act, 2009.

Your Chartered Surveyor will be able to advise you on the implications of the landlord's proposed rent review clause and whether there may be scope for negotiation.

How are disputes between landlord and tenant resolved?

Ideally, by discussion and negotiation but serious differences of view cannot always be avoided, particularly on matters like market rent levels at the review point. Therefore a lease will normally provide in advance for what is to happen when disagreements occur on certain key points.

In the absence of other provisions, the ultimate recourse for either party is to the courts. This would involve considerable time and expense, so the lease may state that disputes which cannot be resolved amicably between the parties should be referred to an arbitrator or to an independent expert. See www.scsi.ie (Dispute Resolution Section).

What are service charges?

In addition to rent, there are certain other regular payments that you as a tenant may need to make to the landlord. Particularly where you occupy only part of a larger building, the landlord may charge you a portion of the cost for services that he or she supplies for the building as a whole: maintenance of common parts, decoration and maintenance of the exterior of the building. This will generally be described as a 'service charge'.

It is important to ensure before signing the lease that you understand the basis on which service charges will be calculated and the sums likely to be involved. **See Chapter 8 Service charges** for more detail.

Who is responsible for paying commercial rates?

The payment of commercial rates normally rests with the person entitled to occupy the property, which is essentially the leaseholder where a lease is in place. Occasionally, however, the landlord will pay the rates and pass on the cost to the tenant, perhaps in the service charge. The lease should make clear where the responsibility lies.

Can I escape from a lease if my property requirements change?

There are two main possibilities if you want to vacate the premises before your lease expires. You may 'assign' the lease to another tenant who takes over responsibility for paying rent to the landlord. Or you may continue to pay the rent, but sub-let the space to another tenant, from whom you in turn collect rent. However, your lease will probably limit or impose conditions on your ability to follow either course, and you need to understand these limitations fully before you sign the lease.

Some leases will incorporate a 'break clause', which gives the landlord or tenant (or both) the right to walk away from the lease at a specific point.

The clauses in your lease relating to assignment and sub-letting can have a very important effect on your future flexibility. You should make certain that your Chartered Surveyor or solicitor explains exactly what you are being asked to agree to, and its possible implications.



Chapter 4:

Building surveys

You would be advised not to buy a building without first commissioning a building survey from a Chartered Surveyor to avoid any nasty surprises when you move in. It may be just as vital if you are taking a lease. You need to know what repairs you might face and you may need the evidence of the survey later if your landlord tries to make you pay for work that you do not think is justified. You need to be sure that the condition of the building when you move in is properly recorded.

When do I first need a building survey?

Before you buy a property or take on a lease you need to know of any problems prior to committing yourself. Whether you are buying or leasing you need to know the condition of the building and the likely repair or maintenance costs.

A lease will normally require you to maintain the property in good repair and to return the property to the landlord at the completion of the lease in a similar condition. Just occasionally, the lease may state that you do not have to return the property to the landlord at the end of the lease in better condition than it was at the beginning. In all cases you need clear evidence of the condition of the building when you take it on. A survey will provide this. A **schedule of condition** attached to the lease at the outset is your safeguard for later.

What does a building survey cover?

You need to tell your Chartered Surveyor the purpose of the survey and its scope. A Chartered Surveyor would not report in detail on the heating or electrical

equipment in the premises or the underground drains, for example. The surveyor will give opinions based on visual inspection but if you want these items covered you must tell your Chartered Surveyor, who can arrange to bring in the appropriate experts.

Other items normally excluded, but where sampling and testing may be included if required, would be the presence of damaging (technically, **deleterious**) materials – such as high-alumina cement, asbestos or pyrite. Specialist surveys are available to cover asbestos and pyrite. You should negotiate the fee for the survey in advance with your Chartered Surveyor.

How does the Chartered Surveyor go about the survey?

The Chartered Surveyor starts with a visual inspection of the building. The usual pattern is to take it top to bottom externally, then top to bottom internally. The Chartered Surveyor will inspect floors, walls and ceilings and will be paying particular attention to signs of settlement, damp or timber decay etc. The state of roof coverings, gutters and down pipes will be noted, as will the condition of doors or windows which may be approaching the end of their useful life. Your Chartered Surveyor will note not only the present condition of the building and its individual elements but also the items that will need attention in the foreseeable future. The immediate repairs that will be needed plus the likely timescale of future maintenance and repair work, with an indication of the probable cost, will be noted in the building survey.

What if I lease only part of a larger building?

The survey will need to cover the part you are planning to lease but will also need to take account of the condition of the building as a whole. The cost of repairs to common parts may be apportioned among the tenants.

What will the survey report tell me?

Your Chartered Surveyor's report will be presented in 'elemental' format. In other words, it will describe each element of the property – roofs, walls, floors, etc – in turn. It will also note the items that have not been covered, such as deleterious materials (unless you have requested this). He or she will, however, note anything emerging from the inspection that give cause for concern and suggest that further investigation is needed. Your Chartered Surveyor will also note anything that could not be inspected during the survey.

May I use the survey report for whatever purposes I like?

No. The report will probably note that it is confidential to you, as the client, and to your professional advisers. It will exclude any liability to third parties who make use of the report without the Chartered Surveyor's express permission.

How can a Chartered Surveyor help with planning maintenance?

Whether you are buying or leasing a property, keeping the premises well maintained will save you considerable money in the long run. If you are leasing your building the lease will probably require you to keep the premises in good condition and may impose a timetable for internal and external decoration. After the initial inspection your Chartered Surveyor will be able to help you prepare a maintenance schedule both of day-to-day items and of other items that will need attention at longer intervals. This will probably be supplemented by an interim inspection by your Chartered Surveyor every couple of years. Sticking to this schedule may save you greater expense later and enable you to budget more efficiently over the period of your lease.



Chapter 5:

Valuations

There are many different reasons why a client might need a valuation of a business property or commercial property. Such a need might be to establish the security for a loan/mortgage or for company accounts, for court proceedings as well as many other purposes. Valuations are often required when considering buying, selling or renting a commercial property, a client might require an indication of the likely price or rent. A valuation may be needed for incorporation into end of year accounts or in a prospectus for a stock exchange floatation.

Given the wide range of purposes that a valuation may be used for, it is a complex professional exercise and there is no such thing as a single valuation for a property, applicable for all purposes. Valuations are produced on different assumptions – and may come up with different answers – depending on their purpose.

For this reason a competent and impartial valuation is essential and the SCSi has a list of registered valuers. Choosing from this schedule should provide a client with the best outcome and quality of a valuation.

Why valuations are important

Valuations underpin nearly all financial decisions from home mortgages to major investment and corporate finance transactions. Valuations prepared by SCSi qualified valuers are valuable documents and are likely to be accepted by most financial institutions as well as corporate and taxation authorities.

Robust practice standards form the basis of high quality valuations. Members of the SCSi work in conjunction with The Royal Institution of Chartered Surveyors 'RICS' one of the world's leading

organisations for valuation professionals and is respected by employers, banks and clients the world over.

As a client of an SCSi valuer, you should expect to receive the highest level of service from them.

What should I expect from an SCSi valuer?

All SCSi valuers practicing in Ireland are subject to the regulations included in the Red Book. This publication known as the RICS Valuation-Professional Standards January 2014 is the latest and most comprehensive review of Property Valuation Standards and is fully compliant with the International Valuation Standards (IVS). This valuer's regulatory manual ensures all SCSi valuers practice to the highest international standards and is supported by the Central Bank of Ireland. As a client you should expect the following level of service from your SCSi valuer:

- **Openness and transparency** – all SCSi valuers are required to make full disclosure and avoid conflicts of interest. Every SCSi valuer is required to confirm in writing that they do not have any conflict of interest with the client or the subject property.
- **Clear reporting** – SCSi valuers are experts in their field and provide clear reports based on diligent investigations, market commentary and analysis. If they are not satisfied that they can provide the required service, they are obliged to inform the client that they are not in a position to undertake the instruction.
- **International Valuation Standards** – all SCSi valuers are regulated to International Valuation Standards. This is the gold standard for valuers and includes mandatory standards for written valuations.

- **World class regulation** – All SCSi valuers are required to have appropriate levels of professional indemnity insurance and a complaints handling procedure.

What information will the valuer need?

Valuation is a professional opinion based on a range of physical, legal and financial information about the property and the market in which it sits. A basic rule of thumb is that the more information the valuer has, the more accurate the valuation is likely to be. Many of these are obvious such as the basic measurements and location details of the property. However the valuation also depends on information such as a clear understanding of what is being valued (eg. are plant and fixtures to be included?). Title and lease details with up-to-date information is essential when providing accurate and comprehensive valuations. Clarity on the purpose of the valuation—bank loan/mortgage; internal management; negotiation or statutory valuations, as well as company accounts rental valuations etc; will result in different and specific valuation reports. They will be materially influenced by title/leases, condition/state of repair, location, as well as the type of property. Your Chartered Surveyor will set out the requirements for any report and consult with the client in relation to the specific requests.

What is not covered by a valuation?

A Market Value or Market Rent Valuation is not a building survey. The valuer will take account of what he or she sees of the general condition of the building, but will not undertake a detailed investigation for defects.

May I use the results of a valuation as I like?

No. A valuation is produced for a specific client, a specific purpose and is based on specific assumptions. To use it in a different context could be misleading. You will need to agree with your valuer at the outset how the report is to be used.

How do I agree the valuation fee?

Fees will depend on the nature and scale of the work, so discuss this at the outset with your Chartered Surveyor, who is required to give you a written note of his or her fees in advance of the valuation. They will also provide the client with a detailed letter outlining the terms and conditions of engagement which will provide additional assurance to the client and ensure delivery of a high quality valuation product. As qualified and experienced property professionals, Chartered Surveyors are bound by SCSi /RICS global ethical standards. They are also required to carry professional indemnity insurance for your protection in the very unlikely event of negligence. Do remember that there is an inevitable element of opinion in any property valuation.

How do I contact an SCSi registered valuer?

You can contact an SCSi registered valuer by contacting the SCSi. Full contact details are available on www.scsi.ie

Chapter 6:

Property insurance



You need adequate insurance for your premises to protect your business. If you are a tenant, it is probably required by your lease. It is important to remember that buildings insurance does not usually cover disruption to your business, contents or stock which will probably need to be insured separately. A Chartered Surveyor can calculate the reinstatement cost of the building for insurance purposes, advise you on precautions that will satisfy your insurer and negotiate on your behalf if you are unlucky enough to suffer a loss.

How do I arrange insurance?

If you are a tenant, the first step is to establish from the lease who is responsible for insuring the premises. It may be that you are required both to arrange and pay for the building insurance. On the other hand, your landlord might arrange insurance but pass the cost on to you. If you occupy only part of a building, the landlord will probably arrange insurance for the building as a whole and charge you your proportion of the cost.

How do I know how much I should insure for?

Your Chartered Surveyor can undertake a reinstatement cost assessment. This tells you what it would cost to rebuild the premises if it was to become a total loss, including the cost of demolition and clearing the site plus professional and local authority fees.

Your Chartered Surveyor can make allowances for inflation and reinstatement costs. In an industrial building, any process plant would normally be insured

under a policy separate from that covering the building structure.

Make sure that your insurance provides cover for disturbance and relocation costs should your premises become unusable following serious damage. You should also ensure that you have insurance cover for continuing to pay rent in the event that the building is damaged and you are unable to run your business from it.



How do I arrange the insurance?

You would normally go through your own insurance broker and obtain at least three quotes. Once you have made a provisional choice, insist on obtaining a copy of the policy document and get your broker to advise you on the policy details.

Your insurers may want to see the reinstatement cost assessment that your Chartered Surveyor has produced, and might also want to carry out their own inspection of the premises. Your landlord may also want to see evidence that you have obtained adequate insurance.

How do I keep my insurance up-to-date?

Your insurance policy will probably have an 'indexation clause' that will automatically increase the sum insured in line with construction costs each year. However, the figures should be reviewed whenever you undertake alterations. In any case you should ask your Chartered Surveyor to review the reinstatement cost on an annual basis.

What happens if I suffer a serious loss?

If your premises are seriously damaged – by fire, for example – the immediate task will be to carry out emergency work to protect the building and its contents.

You should contact your Chartered Surveyor immediately and he or she will be able to negotiate with your insurers or their loss adjusters over the emergency measures and arrange for the work to be done. Later, your Chartered Surveyor will be able to negotiate the full claim on your behalf.

Your lease may provide that rent ceases to be payable if the premises is no longer usable. Finding alternative accommodation will be your own responsibility. If you were responsible for insuring the property, it may be up to you to arrange to have it repaired or rebuilt. Again, your Chartered Surveyor can help with advice and input and may act as contract administrator for the reinstatement work.



Chapter 7:

Commercial rates

You are almost certainly liable to pay commercial rates if you occupy business premises. Commercial rates are a tax based on the rateable value of the property, which reflects its rental value. The rateable value can, however, be challenged. It may change in any case if the premises are altered or if their value is affected by changes in the locality. Some limited classes of property are exempt from business rates altogether.

The Valuation Office, the State Property Valuation Agency, assesses the rateable value of all relevant properties in Ireland.

The Valuation Office Agency publishes a rating list for each billing authority, which shows the rateable values of all properties in its area. The rating list can be seen at the office of the Valuation Office at Irish Life Mall, Abbey Street Lower, Dublin 1 and viewed online at www.valoff.ie. A copy is also available at the offices of the billing local authority.

Most business premises are assessed for rates and have a rateable value. Living accommodation is generally treated as domestic property and is subject to the Local Property Tax instead.

Apart from living accommodation, there are several types of property that are exempt from commercial rates, including agricultural land and buildings, most churches and premises occupied by the State and charities.

There are two main factors which makes up your rates bill: the rateable value of the property and the annual rates multiplier (ARV). Multiply one by the other and you have the annual amount of commercial rates payable.

When do I have to pay commercial rates?

You will receive a rate demand from the appropriate local authority around February each year. Normally you will be able to pay in two moieties, one in February and one in July. Most local authorities will accept equal standing order monthly payments.

What is a Business Improvement District (BID)?

A Business Improvement District (BID) is a business led initiative where businesses and organisations are invited to come together, in partnership with local authorities and public service providers, to make decisions and to take action to improve the trading environment within a defined geographic area.

What are the benefits?

The BID itself provides a means by which businesses and organisations have the power to raise their own funds to address the priorities that matter to them and to bring about positive improvements to the trading environment that benefits the whole community. Whether its focus is attracting more visitors and encouraging customers to stay longer, or raising the standards of local services and facilities, action to deliver an agreed set of projects and services has the potential to transform an area through collective action.

How is it paid for?

A bid levy is imposed on rate payers within the rating district which has elected to adopt this system. It is normally in the region of 4-5% of the rates bill.

What legislation governs rating in Ireland?

The Valuation Act 2001 is the first comprehensive review of rating legislation and valuation law in 150 years, and came into force on the 2nd May 2002. The legislation introduced a number of fundamental changes to the previous system, most notably the introduction of a national programme to revalue all commercial property in Ireland.

The Revaluation is intended to bring more equity, fairness and transparency into the local authority rating system by creating a much closer and uniform relationship between modern rental values and commercial rates payable.

The Valuation Office initiated this national programme in South Dublin – the first of 88 rating authorities nationwide. As of 2014 they have completed revaluations in South Dublin, Fingal, Dun Laoghaire/Rathdown, Dublin City and all of Waterford City and County.

It is intended that once a revaluation has been completed in a rating authority area, all properties within this area will be revalued within a minimum five year period or a maximum ten year period ensuring that there are continual rolling revaluations.

The Valuation Amendment (No.2) Bill 2012 is currently before the Dail and it is expected that it will be adopted in 2014. The Bill will streamline the valuations process outlined in the 2001 Act and will eliminate the second appeal stage to the Valuation Office.

Are there any other pitfalls in the commercial rates system?

Unfortunately, rating legislation is very complex. The safe advice is to consult the professional – your Chartered Surveyor – at the earliest possible stage in the process. Beware of unqualified ‘advisers’ or ‘consultants’ who claim they can achieve a reduction in your commercial rates, particularly based on trading conditions. The less scrupulous may take your money without delivering anything.

How can I appeal a valuation?

Under the current legislation there are three levels of appeal, two to the Valuation Office and one to the Valuation Tribunal (an independent body). There is also a further appeal to the Courts but only on a point of law.

Are commercial rates payable if the property is empty?

Yes, but in most cases under current legislation 50% - 100% refunds are available subject to certain criteria. These are provided under the Local Government Act 2014. This Act also gives the elected representatives of each local authority discretion to alter this percentage.



Chapter 8:

Service charges

You will probably have to pay – over and above the rent – a service charge to cover the cost of services that the landlord provides, particularly if you occupy only part of a larger building. Service charges for business premises are not specifically regulated by legislation. It is up to you, with your Chartered Surveyor's help, to make sure before you take a lease that you are happy with the amount of information you will receive on expenditure, which will be passed on to you via the service charge. You should also ensure that you are happy with the services to be supplied and whether you can opt out of any not required by you. Once again your Chartered Surveyor can help you in this regard.

The SCSI has produced a Code of Practice for its members. This code is widely accepted by the property industry as the best practice principles for the management and administration of service charges in commercial property.

What does a service charge cover?

It probably includes your share of the cost of maintaining common parts of the building and a proportionate share of the costs of repair or redecoration of the building. It would also cover your proportion of the cost of insuring the premises where the landlord is responsible for insurance. If major items of equipment need replacement, such as a central heating boiler that serves the whole of the building, your proportion of the cost would probably be charged by way of the service charge.

Your lease should set out what items would come within the service charge. It is important to get your Chartered Surveyor to explain to you the implications of this part of the lease and what expenditure you might face.

How is a service charge levied?

This will depend on the wording of the lease.

Where there are several businesses occupying one property the costs for services need to be shared. It is likely that each separate occupier will have different needs so it is common for each occupier to pay a proportion of the total service charge for the property.

The proportion could be calculated using a number of methods but the aim should always be to ensure that occupiers bear a proportion of the total costs that is fair, reasonable and reflects the availability, benefit and use of the services. The method and details of the formula used to calculate your share should be clearly communicated to you by the property managers and it is essential that this matrix is reasonable and can be seen to be fair to all occupiers of the property.

The simplest method is to apportion costs on the basis of the ratio the demised premises bear to the total lettable area of the building.

The various items that are covered by the service charge will be listed in an 'expenditure schedule'.

You should be given a copy of both the 'apportionment matrix' and the 'expenditure schedule' together with a clear and easy-to-follow commentary on how the expenditure is allocated between the schedules and how those schedules are apportioned between the occupiers.

Any services that are used by some occupiers but not others should be excluded from the main schedule and only allocated to a separate schedule which is apportioned among the relevant occupiers.

Property owners and managers should try to keep the number of these schedules to a minimum so that

overall management of the services does not become too complex.

The apportionment system means that owners will usually be able to recover all the expenditure on operational services through the service charge. However, sometimes this may not be possible.

The owner is responsible for the service charges attributed to unlet properties and for any specific concessions granted to individual occupiers. These charges should not be passed to existing occupiers.

In addition, the owner will bear a fair proportion of the costs attributed to their own use of the property (e.g. where an on-site management office is used as the owner's regional office) and also for any concessions granted to individual occupiers outside of normal weighting adjustments.

The apportionment matrix should be reviewed after any changes to the occupation or use of the property to ensure that it is still fair. As with all other aspects of service charges, to ensure transparency, changes should be explained and shared with everyone concerned.

How do I know how much has been spent and how much to budget?

Owners should provide you with:

- An estimate (budget) of the projected service charge for the year ahead, including an explanation of the itemised costs (delivered no later than one month before the start of each 'service charge year').
- A statement of expenditure/audit certificate setting out in detail the expenditure incurred for the previous year (delivered as soon as possible, but certainly within four months after the service charge year-end).

Good communication is essential and owners should make sure that the accounts clearly explain the reasons why any actual costs were different from budget estimates. In addition, owners should ensure the layout of accounts is similar each year, so that everyone who reads them can easily compare changes year-on-year.

If you wish to ask questions about the accounts you should do so within a reasonable period – we would suggest four weeks from the date the certified accounts are issued.



Will I have an opportunity to vet the figures?

Ensure that you receive accounts of the actual expenditure. Best practice is for the annual accounts to be reviewed by an independent firm of qualified accountants who can certify that the expenditure is properly incurred under the terms of the lease. Some leases provide for the accounts to be certified by a Chartered Surveyor rather than an accountant.

How can I avoid being overcharged?

There can be disagreement about the quality – and therefore the cost – of work that needs to be carried out and about the cost-effectiveness of the contractors that the landlord employs. In practice, this means that:

- The property owner should obtain competitive quotations for the various services and should select suppliers based on a value-for-money assessment of the services offered.
- The costs of the services should be transparent so that everyone involved is aware of how the costs are made up.
- The owner should ensure that the services being provided are in accordance with the lease provisions.
- Owners should hold service charge money in one or more separate bank accounts.

What if we can't agree on the service charge?

Poorly managed service charges can cause disputes between owners and occupiers, and inevitably, disagreements will arise from time to time.

You have a right to reasonably challenge the propriety of expenditure on services, although you will need to bear the costs of the challenge, unless other arrangements have already been agreed (e.g. by court determination).

Alternative Dispute Resolution (ADR) has been introduced because the courts are increasingly encouraging people to resolve all sorts of disputes – from divorce to service charges – without the need to go to trial. The courts may ask for evidence that ADR was properly considered prior to going to court.

It is worth noting that if you have a dispute over service charges it may also affect other occupiers of the property (a situation known as a 'joinder'). This means that it can be helpful to deal with related disputes from more than one occupier at the same time.

The SCSl Dispute Resolution Service (DRS) is a two-stage dispute resolution process that includes 'mediation' and 'expert determination'. DRS have access to a 'service charges panel' of trained and experienced service charge practitioners to help resolve such disputes.

For further information contact the SCSl:
Full contact details are available on www.scsi.ie





Chapter 9:

Rent reviews

If you occupy your business premises as a tenant, the lease document may provide for the rent to be reviewed at specified intervals, normally every three or five years. There is inevitable scope for disagreement on the level of the new rent and a Chartered Surveyor, with an intimate knowledge of the property market, has a vital role to play in advising and possibly, in representing you. You need to be sure that you comply – and in good time – with the various steps required by the rent review process. If you fail to do so, the rent that the landlord asks for may apply automatically.

When do rent reviews usually occur and what is their purpose?

Rent reviews take place at whatever intervals are agreed in the lease. Their purpose is usually to adjust the rent to the current market level at the review date (see below).

Can rents go down as well as up?

It depends on the lease. In general, prior to the 28th February 2010, the majority of commercial leases contained upwards only rent review clauses which stated that the rent would remain the same or increase subject to market conditions. After the 28th February 2010 commercial leases have an open market rent review which means that the rent may rise, fall or remain the same.

Are rent review clauses the same in all leases?

No. The rent review clauses in leases are often long and complicated. This is partly due to the fact that each lease will reflect the needs of the particular occupier to whom it relates. Professional advice – from a Chartered Surveyor or solicitor – will help you to understand the implications of the rent review clauses in your own lease.

How is the rent review activated?

The rent review process is usually activated by a notice served by one party to the lease on the other. In the past it was the landlord who commenced the process in order to increase his or her rental income. It may be in the interest of a tenant to initiate this process where the rent payable on the open market at the time of review is less than the tenant is currently paying. A specific figure will normally be quoted for the new rent.

If this figure does not seem equitable the other party must write and say so immediately. The recipient of the notice is entitled to ask for the basis of this value and to request comparable evidence on which the figure is based. There may be deadlines in the lease which, if you miss them, may mean that you have to pay what the landlord is asking for. Contact your Chartered Surveyor or solicitor on the procedures and either try to agree a new rent with the landlord or get your Chartered Surveyor to negotiate on your behalf. The revised rent should be based on market evidence generated from transactions and properties that can be compared to the property under review.

On what basis is the revised rent established?

The revised rent of the property is established in accordance with the provisions set out in the lease. The rent is reviewed to what is the 'Market Rental Value' of the property. This means that the new rent will be what could be expected to be achieved if the property were freely available to let on the open market at the date of review without a premium being paid. Some leases will have a provision to review the rent in accordance with the Consumer Price Index or some other formula. (e.g. turnover rents).

What happens if I cannot agree the new rent with the landlord?

The lease will normally specify a procedure for resolving the disagreement. Normally, it will state that you should first try to agree the new rent with the landlord. If you cannot agree on the new rent, the lease will usually state that you should try to agree on the appointment of an independent third party (for example a Chartered Surveyor specialising in valuation) who will decide the new rent. Published panels of independent third party resolvers are available at www.scsi.ie (Dispute Resolution Section).

If you cannot agree on the appointment of an independent third party, the lease will usually provide for the appointment to be made by the President of the Society of Chartered Surveyors of Ireland or the President of the Law Society of Ireland. The independent third party will act either as an arbitrator or independent expert to determine the new rent. A Chartered Surveyor will not be appointed if there is a real risk of bias but it should be realised that the arbitrator or independent expert will probably have had dealings with other properties in the area. It is in the interest of both the landlord and the tenant that the Chartered Surveyor appointed has the requisite expertise.

What are the main differences between the roles of the arbitrator and the independent expert?

The functions of an arbitrator are similar to those of a judge, though the process is private and less formal than that of a court. An arbitrator reaches a decision – which is called an 'award' – after taking evidence from the different parties. The parties can agree to submit evidence to the arbitrator in writing or a hearing may be advisable if there is a conflict about facts or other evidence. If the parties cannot agree, then the arbitrator decides how evidence will be taken. The arbitrator inspects the property and comparisons and will determine the new rent based on the evidence submitted. The arbitrator is obliged to give reasons for his decision which should explain how he has arrived at the rent. The independent expert, too, may receive evidence and listen to arguments, but also has a duty to make his or her own investigations to determine an appropriate rent. The expert will not usually provide reasons for the decision.

Who decides whether the independent third party is to act as arbitrator or independent expert?

The rent review provisions in the lease will usually specify the capacity in which the independent third party is to act. In some leases one of the parties, usually the landlord, has the right to decide whether the independent third party should act as an arbitrator or independent expert. In newer leases the party applying for appointment has the right to choose.

How does the independent third party procedure work?

The purpose of appointing an independent third party is to achieve a fair, final and relatively quick, inexpensive and informal final settlement of disputes about rent, without having to go to court.

How does SCSi choose the arbitrator or independent expert?

The President will appoint a Chartered Surveyor with specialist training and experience to act as arbitrator or independent expert. The SCSi maintains panels of suitable persons with market knowledge, experience with the dispute handling process and who are capable of making a balanced considered decision.

It is in the interest of both sides that the person appointed will have relevant knowledge of the market and appropriate expertise. Panel members are required to provide information on their experience and familiarity with particular localities and types of property. This is held on file and assists the President in selecting the appropriate person to decide a particular dispute. Ideally, he or she will have had dealings with other properties in the area. Before making an appointment the President will request the parties to identify any persons who should not be considered because of prior involvement with the property or connections with either side. The potential candidate will also be asked to state that they have no conflict of interest whether individually or through their firm.

An application form available at www.scsi.ie (Dispute Resolution Section), together with a copy of the certified lease(s) is used to assist the President in making the appointment. A copy of this application form will be sent to the prospective appointee being considered for the appointment. This is to ensure, that there is no conflict of interest between both the prospective appointee and the parties. The prospective appointee can then make an informed decision as to whether he or she can act in this case. A copy of the application form will also be sent to the other party involved.

The President gives careful consideration and due weight to any objections or other comments made by the parties or their representatives. However, he or she cannot be bound by any such objections or representations and will reach his or her own decision as to who should be appointed.

Both parties are normally advised of the appointment as soon as it is made, and on the basis that no particular problems arise, the procedure is usually completed within three-four weeks from the date of

receipt of the application for the appointment of an arbitrator/independent expert.

On what basis is the arbitrator or independent expert paid?

An administration fee of €325.00 per lease is charged by the SCSi to appoint an arbitrator/independent expert. Following the appointment, the arbitrator or independent expert will ask you and your landlord to agree to the fee to be charged. Fees are open to negotiation and are usually agreed, but the arbitrator or independent expert has a duty to proceed even if agreement has not been reached. If you or the landlord feels that the fees are too high, there are procedures for challenging them in court after the rent review has been settled.

Who pays the fees of the arbitrator or independent expert?

The lease normally stipulates responsibility. In the case of the independent expert, the fees will usually be payable equally by both parties. Sometimes the expert has discretion and will determine that, one party may be liable to pay all, or a specific proportion, of the fees. In arbitration, the arbitrator has complete freedom to decide how the fees and the costs of the parties are to be apportioned. This is the case even if the lease states that one party should pay all of the arbitrator's fees. In law the arbitrator must give reasons and the decision on costs can be appealed to a Taxing Master.

Does the landlord or tenant need to be professionally represented in arbitration or independent expert proceedings?

Arbitration and expert determination proceedings are usually less formal, when compared to court proceedings, and it is not obligatory for you or the landlord to be represented, either by a Chartered Surveyor or a solicitor. However, expert advice can be invaluable, both in interpreting the precise terms of the lease (which will have an effect upon rent) and in obtaining details of transactions relating to other premises which may influence the level of rent. Landlords are very often

advised by Chartered Surveyors and may be experts in property matters themselves. Presenting a case to an arbitrator without professional help can be risky.

A surveyor who acts for you in dealings with the arbitrator is best placed to present specific evidence of comparable transactions and also to give an opinion as an 'expert witness', based on professional knowledge and judgement. Where disputes are referred to independent experts, the presentation of a case may be somewhat less important because an independent expert must make his or her own investigations and use his or her personal knowledge when making a decision. Nevertheless, it is advisable to use professional help to present a case.

What happens when the arbitrator or independent expert has reached a decision?

The decision – an arbitrator's 'award' or independent expert's 'determination' – is usually released after his or her fees have been paid.

When does the new rent become effective?

Once the arbitrator's award or independent expert's determination has been issued to the parties, any increase in the rent previously payable will become payable immediately and will be effective from the rent review date, even if that date has passed. Often, leases will provide for interest to be paid on the increase in rent from the date of the rent review until the date of payment.

Is an award or determination final?

A limited list of grounds is available to challenge an award under the 2010 Arbitration Act. Under this Article, the grounds upon which a party can apply to the High Court in Ireland to have an award set aside are confined to those set out below:

- A party to the arbitration agreement was under some alleged incapacity or the arbitration agreement was invalid under the law to which the parties have subjected it or under the law of the state.
- The party making the application did not receive proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case.
- The award contains decisions on matters beyond the remit of the submission to arbitration.
- The structure of the arbitral tribunal was not in accordance with the agreement of the parties.
- The arbitral process was not in accordance with the agreement of the parties.
- The award is contrary to the public policy of the state.
- Under the law of the state, arbitration is incapable of resolving the subject matter of the dispute.

Are there alternative and possibly cheaper ways to settle a rent dispute?

Yes. The parties can, of course, settle a rent dispute by negotiation. Alternatively, it is possible for the parties, by agreement, to refer the dispute to a mediator. Mediation can be described as negotiation which is helped along by an independent third party. The role of the mediator is to help the parties to find common ground, prevent them from becoming entrenched and help them move towards an agreed and amicable settlement.

Mediation can produce a quicker and less expensive resolution which satisfies both parties. A mediator is different from an arbitrator or independent expert in that he or she would have no authority to impose a rent upon either party. Rather, the role of the mediator is to help the parties to reach an agreed settlement. The Dispute Resolution Department of the SCSJ can also assist with recommending Chartered Surveyors who act as mediators in this field.

Chapter 10:

Renewing a lease



For business space occupiers, the governing legislation between landlord and tenant is the Landlord and Tenant Amendment Act 1980 and the Landlord and Tenant Amendment Act 1994. Upon lease expiry, a business tenant may under certain circumstances qualify for lease renewal rights under legislation.

The right to a new tenancy has been further amended by section 47 of The Civil Law (Miscellaneous Provisions) Act 2008, which allows business tenants (regardless of user) to 'contract out' of their statutory entitlement to a renewal of their lease.

Do I qualify for renewal rights?

Tenancy renewal rights will depend on a number of factors, the most common being, where there has been five years continuous occupation by the tenant and where the property has been used for business purposes. 'Business' is defined very widely in the legislation to include any trade, profession or employment.

What is contracting out?

'Contracting out' of one's tenancy renewal rights is permissible (regardless of user) under the The Civil Law (Miscellaneous Provisions) Act 2008. This legislation was introduced to dispense with the previous practice of granting short term convenience lettings of four years and nine months, where the sole purpose of the short lease term was to avoid conveying lease renewal rights on the tenant. In many cases such leases were impractical both for landlord and tenant, incurring unnecessary business disruption, rental voids and fees.

To 'contract out', tenants must first obtain legal advice before signing a declaration confirming that their renewal rights are being extinguished voluntarily and that they understand the consequences of their declaration.

Can my landlord refuse my right to renewal?

Landlords looking to frustrate lease renewal rights under current legislation must give prior notice of their intention to do so, not less than six months before lease expiry and not more than twelve months following lease expiry.

Where the tenant serves a notice to apply for a new lease, the landlord must serve a counter notice within two months if he or she wishes to oppose the tenant's application, otherwise he will lose all rights to subsequently oppose the lease renewal process.

A landlord's notice must state the grounds for refusal and must specify the date upon which the landlord is seeking for the tenancy to terminate.

Grounds for the Courts to refuse a tenant's application for lease renewal and uphold a landlord's objections, must be on one of the following grounds:

- Substantial breach of the current lease terms and conditions by the tenant.
- Non payment or persistent delays in paying the contracted rent.
- Alternative suitable accommodation is being offered by the landlord.
- Repossession is required for the purposes of development by the landlord.

- The landlord needs to occupy the premises for the purpose of his or her own business.

What is involved in the renewal process?

Where the tenant has not extinguished his right to lease renewal by 'contracting out' and the landlord has not frustrated the tenant's lease renewal rights under governing legislation, and in the absence of an agreement between the parties, either the tenant or indeed the landlord may apply to the Circuit Court to set the terms of the new lease.

In the case of the tenant, he or she must specify the date on which he or she proposes the new tenancy to begin, the proposed rent and other terms such as lease duration. The new lease may set for a minimum of five years and a maximum of twenty years. If the tenant follows the stipulated procedures, the Circuit Court will make an Order for a new lease.

The Court has the final say on the terms of the new lease taking into account such matters as the duration of the original lease, accepted market practices, prevailing rent review provisions and the level of the revised rent. The revised rent shall in the opinion of the Circuit Court equate to the current Open Market Rent (OMR), disregarding any current tenant improvements and goodwill.

Am I entitled to compensation upon termination of the lease?

On lease expiry the tenant may be entitled to apply to the courts for compensation for their improvements to the property where an application for a new lease has been rejected by the Circuit Court on certain no fault 'grounds' of refusal.



Chapter 11:



Tax allowances on property

There is no point in paying more tax than you have to. Some of your property-related spending may be allowable against your taxable profits, but this depends on the classification of capital expenditure. Please note that this is a highly complex area where you really need the specialist advice of your Chartered Surveyor and accountant at the earliest possible stage.

What are capital allowances?

Capital allowances, also known as wear and tear allowances are a tax relief designed to allow the cost of certain business assets to be written off against taxable profits. The allowances can be claimed on an annual basis, provided that the assets are used for trade purposes at the end of the chargeable period (i.e. accounting period in the case of companies and year of assessment in the case of other persons). They are calculated by reference to the cost of the asset less grants received in respect of the property acquisition. The actual cost includes installation costs, freight and duty.

These allowances are available to sole traders, self-employed people and partnerships, as well as companies and organisations liable for Corporation Tax.

Balancing allowances or charges may arise where business assets which have qualified for capital allowances are disposed of. Where the proceeds of sale are greater than the tax written down value, a balancing charge arises. Alternatively, provided that the proceeds of disposal are less than the tax written down value of the asset then a balancing allowance arises.

Balancing charges will not arise where the proceeds on the disposal of an individual asset are less than €2,000. This will not apply to disposals between connected persons.

How many types of allowances are there?

The most common type of capital allowance is for plant and machinery and for many businesses this is only one of the types of capital allowances that can be claimed.

The others are:

- Specified Intangible Assets
- Energy-Efficient Equipment
- Computer Software
- Scientific Research
- Industrial Building Allowances
- Dredging

What qualifies for allowances?

The various conditions attached to the availability of capital allowances differ depending on the nature of the expenditure, whether the investor is using the asset in their trade and whether they are an owner occupier or a passive investor.

There is no legislative definition for plant and, as such, we must rely on the case law.

Generally, in order to avail of the relief by way of the capital allowances, the assets must be kept for 'permanent employment in the business'. The items of plant and machinery should meet the functional test (i.e. 'apparatus used in carrying on business and not part of the setting').

Capital allowances are not available in respect of buildings whose basic construction does not perform a function as part of the trade. However, shops, offices,

leisure facilities, care homes, factories, airports and countless other types of buildings often contain large amounts of plant and machinery that qualify for capital allowances. Typically the value of this functional plant and machinery represent a significant proportion of the cost of property as a whole.

Some examples of items that can be plant include air-conditioning systems, lifts, IT/data cabling, alarm and security installations, some floor finishes, moveable or demountable partitioning systems and electrical installations. On the contrary, the plant or machinery which is integral to the building (i.e. not movable) will not qualify for capital allowances.

In all cases, expenditure on the provision of plant and machinery does not include expenditure on land.

Does refurbishment expenditure qualify as a capital allowance?

In some cases, expenditure on certain refurbishment of an existing building incidental to the installation of machinery or plant can be treated as if it was expenditure on that machinery or plant and as if the refurbishment was part of the machinery or plant.

Do professional fees qualify as a capital allowance?

Ancillary professional fees may qualify for capital allowances based on whether it is attributable to revenue or capital. This matter has been considered in a number of tax cases and the main findings appear to be that legal expenses incurred in acquiring a capital asset are treated as capital expenditure when it has been acquired.

The table below shows the rates of capital allowances for different classes of properties/assets. Over time, the total cost of the asset should be recoverable via these capital allowances.

How is property expenditure classified?

There is a distinction made between expenditure that is revenue or capital in nature. In broad terms, capital expenditure is that expenditure which brings into existence an asset of permanent or enduring benefit. Other expenditure is revenue in nature.

Revenue expenditure may be charged against your income before arriving at the profits that are subject to tax.

Capital expenditure is spending on items that remain on the balance sheet beyond the year-end as an asset of the business. Though these assets will be depreciated in your accounts, this depreciation is not allowable against taxable profits. Instead of this you may charge against profits a 'capital allowance' in respect of money you have spent on certain classes of asset. Unfortunately, only certain categories of property qualify for capital allowances.



Type of property or asset	Basis for annual allowance	Notes
1.1: Plant and Machinery Pool	12.5% for 8 years (applies on or after 4 December 2012)	Includes various items of plant and equipment in commercial buildings but excludes anything that is defined as integral features.
1.2: Energy-Efficient Equipment	100%-accelerated allowances on actual costs in year 1	<p>Energy-efficient equipment must be purchased as opposed to leased, let or hired and meet other legislative criteria.</p> <p>Includes the following classes of technology: motors, lighting, heating & electricity provision, etc.</p> <p>This scheme runs until the 31st of December 2014.</p>
1.3: Specified Intangible Assets	<p>Two options are available:</p> <p>Fixed write-down period: 7% straight line for 14 years followed by 2% straight line in the 15th year (must elect for this option)</p> <p>or</p> <p>An amount equivalent to depreciation/amortisation/impairment charge in the statement of comprehensive income</p>	<p>Scheme applies to new specified intangible assets acquired or developed internally on or after 7th May 2009.</p> <p>Includes patents, registered designs, trademarks and names, brand and domain names, copyrights, know-how, licences. Also includes goodwill to the extent that it is directly attributable to the specified intangible asset.</p> <p>The aggregate amount of any capital allowances and related interest expense in funding an acquisition of intangible assets in an accounting period shall not exceed 80% of the trading income from the relevant trade. The relevant activities include managing, developing and exploiting of the specified intangible assets.</p>
1.4: Computer Software	<p>Treated as:</p> <p>The plant and machinery</p> <p>or</p> <p>Specified intangible asset</p>	<p>The legislation treats the grant of a licence or right to use computer software, and the computer software itself as two separate assets for capital allowances purposes.</p> <p>The capital expenditure in acquiring a right to use the computer software for the purposes of trade, the right, and the software itself, is treated as plant and machinery.</p> <p>Computer software acquired for the purposes of its commercial exploitation will be treated as expenditure on a specified intangible asset.</p>
1.5: Scientific Research (capital/non-capital)	100% of the expenditure is deductible as a trade expense in year 1	<p>Any activities in the fields of natural or applied science for the extension of knowledge. It covers areas as diverse as stem cell research to population sampling and includes fields of knowledge from biology to economics.</p> <p>Excludes expenditure on activities relating to petroleum/mineral extraction or exploration.</p>

Type of property or asset	Basis for annual allowance	Notes			
1.6: Industrial Building Annual Allowances ("IBAA")	4% on a straight-line basis over a 25 year period.	Building	Expenditure incurred after	Writing down period	Annual allowance %
	The most common examples of those are provided in the table	Mill, factory, dock	16/1/1975	25 years	4%
		Laboratory mineral analysis for	25/1/1984	25 years	4%
		Market gardening	6/4/1975	10 years	10%
		Hotel	4/12/2002	25 years	4%
		Intensive production of livestock	6/4/1971	10 years	10%
		Airport runways and aprons	23/4/1992	25 years	4%
		Airport buildings	27/3/1998	25 years	4%
		<p>In order to qualify for IBAA, the taxpayer must hold the relevant interest in new/second-hand industrial building in use for the purpose of a trade carried on by him.</p> <p>The amount in respect of which allowances may be claimed depends on whether or not the seller is a person who carries on a trade of the construction of buildings.</p> <p>Restrictions apply on a cut-off date for claiming capital allowances on certain industrial buildings (i.e. hotels, guest houses, nursing homes, etc) that qualify for accelerated capital allowances. The cut-off date is the later of (i) 31st December 2014 and (ii) the end of the tax year in which the tax life of the building ends.</p> <p>However, the cut-off date does not apply where the person claiming the capital allowances uses the building for the purposes of his/her trade.</p>			
1.7: Dredging	10%-Initial Allowance 2%-Annual Allowance	<p>Expenditure incurred in the removal of anything forming part of or projecting from the bed of the sea or of inland water.</p> <p>This expenditure must be incurred for the purposes of a qualifying trade.</p>			

What qualifies as capital expenditure?

In general terms, capital expenditure is spending associated with the creation or acquisition of an enduring asset, typically covering semi-permanent or permanent items that will have a value beyond the end of the financial year (i.e. new shop front, a new computer system, new heating equipment, new manufacturing equipment, etc).

What qualifies as revenue expenditure?

In general terms, capital expenditure is spending associated with the creation or acquisition of an enduring asset. Revenue expenditure would cover your spending on 'consumable' items that will have no value after the year-end (i.e. rent, insurance, building repairs, salaries, stationery, etc). The definition of 'repairs' may be complex hence you should obtain professional advice.

Where is the dividing line between capital and revenue spending?

Whether an expense is revenue or capital in nature is a question of fact to be determined in the individual

circumstances. The division is not always clear cut and can vary from project to project. If the whole of a property is new there is very little doubt that all of the costs should be capitalised. However, if you extend an existing building and the original building is in need of some maintenance, which you, for convenience sake, roll into your new extension project, the divide becomes less clear. Any works done to renew anything on the original building in its entirety (the whole roof for example) will be classed as capital. If, on the other hand, you do a patch repair to the roof or replace one or two windows, this cost can be treated as a revenue expense (this is sometimes referred to as 'revenue within capital').

Repairs would normally be a revenue expense. However, if you buy or rent a dilapidated building at a price which reflects the state in which you acquired it and the fact that money will need to be spent to bring it up to a useable standard, the cost of the works, even though they are of a repairing nature, may be classified as capital. You will only be able to get a tax deduction for this work to the extent that any of it qualifies for capital allowances.



How do you make a claim for allowances?

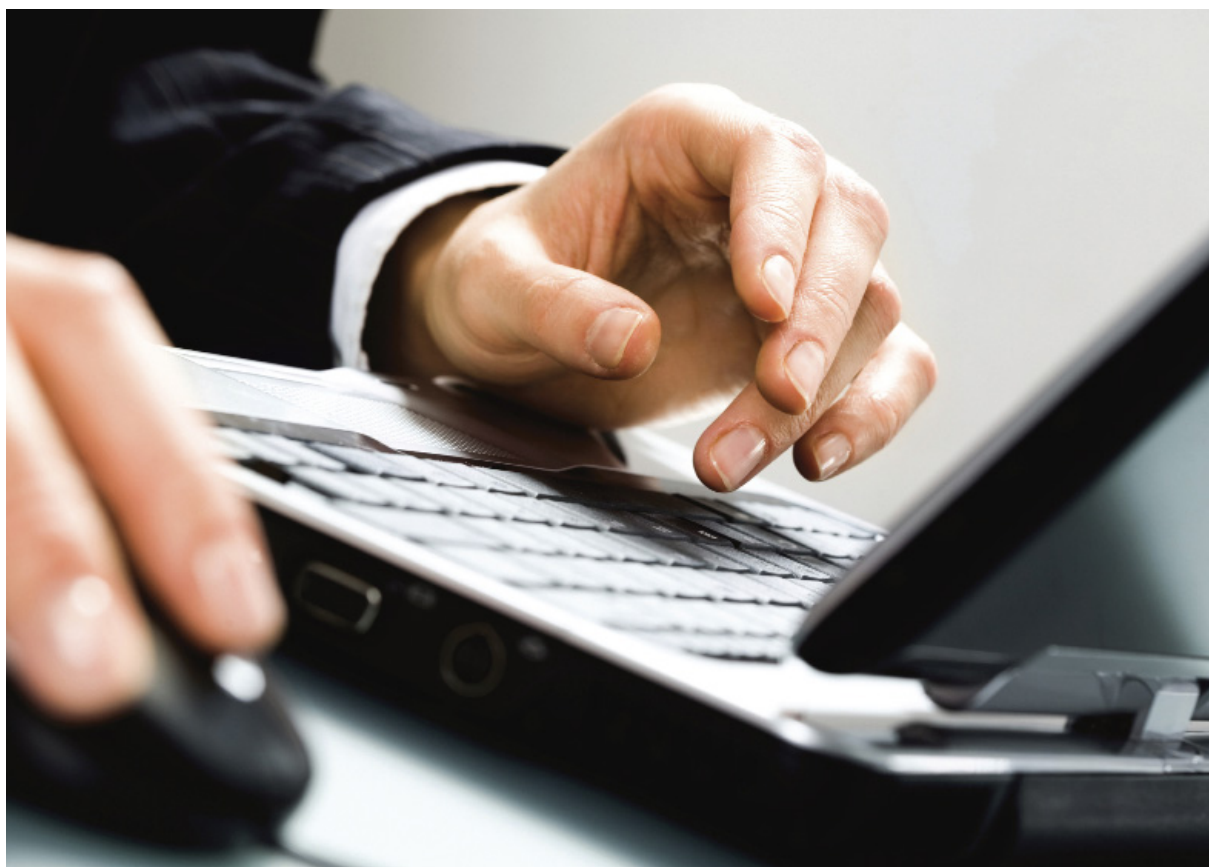
Once the capital allowances are calculated, a claim should be made in your annual tax return.

It is not unusual not to make a claim, or to under-claim, not least because the necessary advice cannot be provided by one professional, but instead requires the input of tax and property specialists. As a result, opportunities to reduce tax burdens significantly, are lost on a regular basis.

Can we help you to plan ahead to minimise your tax liability?

The argument for tax planning is simple and straightforward: it helps you increase your entitlement to capital allowances at the design stage of a new project.

The successful identification, planning, documentation and negotiation of qualifying items are therefore reliant upon specialist skills and knowledge. Tax expertise combined with specialist knowledge of buildings and plans should be obtained to ensure maximum savings.





Chapter 12:

Construction and alterations

Whether you are considering simple alterations, a more complicated refurbishment or extension or a completely new building, a Chartered Surveyor will be able to advise on all stages from inception to completion.

The time and effort spent on the planning and preparation stages of a building project are vital. If you get this right, you can save considerable amounts of time and trouble on the actual construction work.

Are procedures different for alterations and for new building work?

In essence, no. The same logical approach will ensure that you achieve what you are aiming for with the minimum of expense and fuss but there are some differences in detail.

If you are a tenant you are more likely to be undertaking internal alterations than extensions or new building work. Under the terms of your lease you will almost certainly require the landlord's permission – perhaps in the form of a 'licence' – for this work.

Where do I start?

Clearly, you will have a rough idea of what you are trying to achieve with the alteration or building work, but there are some other decisions you need to make at the outset. Is appearance more important than function? What level of quality are you aiming for? A high quality product is not always the best solution if a simpler structure might work just as well.

On the cost side there are several points on which you need to be clear. Do you want to be certain on final costs from the outset? This assurance might put the price up. Have you considered the cost of maintaining the structure (and related costs) when it is completed? Extra expenditure at the construction stage could save money later.

Bringing in a Chartered Surveyor

Engage a Chartered Surveyor with detailed experience in buildings, especially costing and managing new building works. The surveyor must have good local knowledge and expertise in cost management and, if required, project management of building works.

A Chartered Surveyor will be able to assist you in terms of space, design, finish, equipment, access and similar matters. He or she can then prepare an initial sketch design of your proposals and can prepare initial budget costs and detailed costs later as the design develops. You will also want an indication of how long the work will take. If you need the work completed by a particular date you will need to make this clear in advance.

A Chartered Surveyor will be able to provide you with the necessary detailed design information required for the whole project in order to take it to the next stage.

What local authority approvals will I need?

Detailed drawings will be needed for the requisite local authority approvals. There are two principal types of approval: 'planning permission' and 'Building Regulation approval'. The two different types of approval are separate and have separate procedures. If your building

is either listed or in a conservation area you may also require listed building or conservation consent. A Chartered Surveyor with conservation experience can provide you with expert advice in this area. For more information in relation to planning permission, **See Chapter 13 Planning Permission.**

Any construction work that requires a Fire Safety Certificate, new dwellings and extensions to dwellings greater than 40 m² with a commencement notice lodged after 1st of March 2014 will fall under the Building Control (Amendment) Regulations 2014.

These regulations will provide for a much more intensive system of monitoring and control of construction work. The new legislation requires mandatory design certification, lodgment of plans, builder's supervision and certification and mandatory inspection by an appointed "Assigned Certifier". An Assigned Certifier can be a Registered Building Surveyor, Registered Architect or Chartered Engineer. Upon completion the Assigned Certifier will then sign a certificate of compliance. This will affect all buildings and works. Administration and overseeing of the system will be by local Building Control Authority, but they will not have responsibility for certification of works.

The tendering process

Once you have planning permission (if necessary) and Building Regulation approval, go carefully through the drawings and specifications to make sure it is exactly what you want. Changes at a later stage may be disproportionately expensive and could cause delay.

Once you are satisfied, your Chartered Surveyor will prepare tender documentation, which will include drawings, a specification and, for larger projects, a 'bill of quantities'. Usually, tenders would be obtained from at least three contractors. These documents will form part of your contract. Your Chartered Surveyor can help evaluate the result and select the right contractor.

How will the work be administered and inspected?

Get this clear at the outset. The usual procedure is that you name your architect as contract administrator on the agreement you sign with the chosen builder. The person named as contract administrator will issue instructions and make sure that the work is properly carried out in accordance with the contract, drawings and specifications. Do not be tempted to intervene and give instructions yourself. This can lead to endless confusion, acrimony and considerable extra cost.

Do not accept the finished work until your contract administrator is fully satisfied. Obtain a Certificate of Compliance. This document confirms that the build has been completed in accordance with the planning permission and the Building Regulations and is necessary should you wish to dispose of the property in the future. Even after the new structure has been handed over there will be a 'defects liability period' of between three and twelve months. During this period your architect will inspect the building and get the contractor to remedy any defects that emerge.



Chapter 13:

Planning permission

If you intend to alter or extend your premises, carry out a different trade from the premises or even construct a totally new building, you face two important questions. Do I need planning permission? If I do, how do I obtain it?

Planning is a complex and difficult area and professional advice is essential. Treat what follows as an outline of a system which has numerous exceptions and pitfalls for the unwary! Chartered Surveyors understand planning law and practice and the effect that any development will have on the future use and value of the property and they can act as your personal agent in planning matters. Call them in before you hit problems. Don't wait till afterwards.

It also presumes that your property is not a protected structure. If you own a protected structure or your premises are in an architectural conservation area, different and stricter **rules** apply, and failure to comply with enforcement notices arising in relation to breaches of planning is a criminal offence.

When do I need planning permission?

Planning permission is required by law for all forms of 'development' – a broad term that may embrace even a change of use where no physical alterations are involved. The Planning and Development Act 2000 defines development as being:

“The carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”

There are, however, exceptions to the general rule. Planning permission is not usually required, for example, for internal alterations (though alterations to protected buildings may require planning permission). In addition,

small external alterations, the construction of walls and fences below a certain height and certain changes of use may not require a planning application. In order to determine whether or not planning permission is required, you or your Chartered Surveyor may check informally with the local planning authority. Alternatively, under Section 5 of the Act you may refer the matter of whether a proposal is development or is exempt from the requirement to obtain planning permission.

When does change of use require permission?

When you purchase or lease premises, there is likely to be an existing or established use attached to the premises. Change from this use may require permission. It is vital to find out if permission is required for the use you propose and, if so, whether or not permission is likely to be granted.

Change of use is regulated through categorising similar types of use into a 'use class' as outlined in the Planning Development Regulations 2001-2013. Planning permission is not required where the proposed new use of the premises falls within the same use class as the existing use. In certain cases it is also possible to change the use between classes without needing permission.

Do I need planning permission if I run my business from home?

Working from home will not always require planning permission. For example, using just one room of your home as a personal office or for music or language teaching will not necessarily require permission, but there is a condition: the character of the house must remain that of a private dwelling and your activities

must not result in disturbance to adjacent residents, for example, generating additional traffic and parking. It is always advisable to check with the local planning authority to be on the safe side.

Does an extension require planning permission?

Planning permission will not always be required for minor extensions or additional buildings within the boundary of a property, but the rules are complex and you should take professional advice.

Do I need planning permission to build new premises?

Yes. Right at the outset you would be well advised to discuss your proposal informally with the local planning authority before submitting an application. They will be able to advise you whether or not planning permission is likely to be granted and how any difficulties with your proposal can be overcome. The planning officer's advice is strictly informal, however, and he or she cannot guarantee that planning permission will be granted.

How do I apply for planning permission?

Applications for planning permission should be made to the local planning authority on the appropriate forms, which can be downloaded from their web site or they will supply on request. There will be a fee to pay when you submit the application.

Who can submit a planning application?

Planning applications may be made by anyone, regardless of who owns the land or buildings. However, if the applicant is not the owner of the entire site, he or she must obtain the consent of those with an ownership interest in the property to make the application.

You may make an application for planning permission personally or you may instruct a Chartered Surveyor or other suitably qualified person to submit the application on your behalf. You would be well advised to employ a Chartered Surveyor where applications are complex or likely to be contentious.



Should I discuss my proposals informally with the planning authority?

It is often advisable, particularly in complex cases, to meet with a planning officer to discuss the application and the information that the planning authority will require. If you have appointed a Chartered Surveyor to submit your application, he or she can do this on your behalf. There is a formal pre-application consultation process with the planning authority.

Are there different types of planning application?

Yes. Applications for planning permission fall into one of three categories: applications for 'outline planning permission', applications for 'planning permission' and applications for 'retention permission'.

When should I apply for outline permission?

You should apply for outline planning permission only for new buildings and where you want to find out whether or not the proposal is acceptable in principle, without providing detailed drawings of the scheme. When outline permission is granted, you will subsequently need to obtain permission for all the details of the scheme before work can begin.

What are the procedures for full planning permission?

To obtain full planning permission you must submit all details of the proposal, including detailed drawings of a specified scale, with the application. Other supporting reports, including traffic, drainage and an appropriate assessment screening report under the Habitats Directive may be required. A site notice must be erected and a newspaper notice published. An application fee is payable and is dependent upon the class and size of development. For very large developments, an Environmental Impact Statement may be required. The application must be formally validated by the planning authority before it is

processed. Different procedures apply for strategic infrastructure (e.g. energy projects).

Timetable for the planning decision

The statutory time limit for determining planning applications is eight weeks from the formal registration date of the application by the planning authority. The decision can be to grant, refuse or request further information or modified plans. If further information is requested the applicant is given a further maximum 6 months within which to respond.

Post Planning Authority Decision and Appeal System

In the event that the planning authority issues a notification of a grant or refusal of permission, there is a further four week period before any final decision is issued. The applicant, or third parties who have submitted an observation on the original planning application, have the right to appeal the decision to An Bord Pleanála within the four week period after the issuing of the notification of the decision by the planning authority. The applicant can also appeal against conditions attached to a grant of permission. It is a statutory objective of An Bord Pleanála to decide planning appeals within four months, although this period is often extended.

Appeals may be dealt with either by way of written representation or oral hearing. The chosen route is usually dependent upon the complexity of the case. Although you may submit an appeal on your own behalf, it is usually advisable to consult a Chartered Surveyor or other competent professional, in order to obtain professional advice as to which format will be most suitable for your particular case. Your adviser will also be able to submit the appeal on your behalf and suggest the most appropriate grounds of appeal. In the event that there is no appeal against the planning authorities original decision a final grant of permission will be issued by the planning authority. If there is an appeal, An Bord Pleanála issue the final decision saying whether planning permission has been granted or not and giving the reasons if it has been refused.

If planning permission is granted

If permission is granted, and unless the decision document states otherwise, the development must begin and be substantially completed within five years of the grant of permission.

Conditions attached to planning permission

Sometimes planning permission will be granted subject to certain conditions. These may restrict the use of the premises; restrict the hours of operation of a business or require specific approval for the materials to be used before the development can proceed. If a condition is not acceptable, you or your agent may appeal the decision to An Bord Pleanála within the four week period following the issuing of the notification of the decision by An Bord Pleanála.

How are planning decisions enforced?

If you carry out construction work or change the use of the premises without obtaining the necessary planning permission, the planning authority may simply ask you to apply retrospectively for permission. Planning authorities have to assess each application on its merits, in the light of the development plan and other material considerations. Therefore, you should not assume that an authority will be influenced into granting permission merely because the works have already been carried out. The planning authority may issue an 'enforcement notice', setting out what you must do to remedy the breach of planning control – which in extreme cases could involve demolishing the building that you have constructed.

If you have failed to comply with a condition which forms part of a planning permission, the local authority may issue a 'warning notice' or an 'enforcement notice'. The notice will state what is required to comply with the condition.





Chapter 14:

Sales, assignments and sub-letting

A systematic approach to disposing of property can minimise business disruption, save time and money. The preparation involved will depend on whether your interest in the property is freehold or leasehold. If you are a tenant, are you likely to assign your lease or alternatively opt to sub-let? In all cases you will want to decide on your best route to market, agree budgets and have an understanding of all the likely issues involved.

How should I choose a Chartered Surveyor?

The most important step is to choose a Chartered Surveyor as your agent who handles the marketing of similar properties in your area. If you need guidance on your choice, ask two or three firms to visit you and to let you have a brief report setting out their marketing proposals and their views on price or rent, as applicable. Do not necessarily go for the firm that quotes the cheapest commission or indicates the highest price or rent that might be achieved. You should be confident that your selected Chartered Surveyor will meet your reasonable expectations for the task involved.

In compliance with current statutory legislation, the Chartered Surveyor's report will always contain his or her 'terms of engagement' which must set out the commission or fees payable, details of agreed marketing expenditure, period of engagement and how one deals with any potential conflict of interest. Your chosen firm will be able to advise you on the marketing period most likely required to dispose of your property interest, in the context of the current property market in your area. This will be important, if you plan to relocate to alternative premises or indeed are reliant on releasing funds from the sale for a particular purpose.

Tell your staff and customers of your planned move

This is often overlooked. Make sure that all your staff, customers and suppliers are told of your plans to leave the property before it is put on the market. A 'For Sale' or 'To Let' board might give the wrong impression unless people have been forewarned!

What are you leaving in the property?

Agree precisely what fixtures, fittings and other equipment you will be leaving for the new occupier. If you are a tenant, this will also involve identifying the landlord's fixtures and fittings that go with the building.

Have all information and legal documents ready

Prepare a dossier of background information on the property which can be made available to prospective buyers or tenants, including copies of planning permissions, building survey reports and plans of the property. If you are a tenant, information from your landlord on service charges will be useful including the provision of annual audited service charge accounts.

You also need to brief your solicitor on the disposal as early as possible. This will give him or her a chance to locate title deeds or leases and to ensure that there are no obstacles to the preparation of a draft contract.

What are the tax implications of a disposal?

This will depend on the circumstances. Before putting the property on the market make sure that you take advice on the tax aspects to minimise liabilities and exploit any possible opportunities. You need to think of the Capital

Gains Tax position. Your accountant will advise you on your approach to dealing with potential VAT liabilities on the property disposal, including the possibility of VAT on the premium if you are assigning a lease.

What if I am a tenant rather than an owner-occupier?

If you want to dispose of your interest in a property that you occupy under a lease that still has time to run, you have two main choices. You might assign the lease or you might sub-let the property. If you sub-let, you then become the landlord of the incoming tenant.

Assigning a lease means that you transfer the benefits and the obligations of the lease to somebody else, who then has the use of the property and becomes responsible for paying rent to the landlord and observing the other obligations of the lease.

If the current rent on the property is below open market rental levels, an incoming lease assignee may be prepared to pay a capital sum or “premium” for acquiring your leasehold interest. On the other hand, if you should be paying a rent above the open market rate on your property, you may need to pay a capital sum or “reverse premium” to entice a lease assignee.

If, instead of assigning your lease, you opt to sub-let your property to a new tenant, you remain responsible for paying the rent to your landlord and observing all the other terms of the lease. Under the lease that you grant to your sub-tenant (the ‘sub-lease’), he or she will then pay rent to you and be responsible to you for observing the other obligations of the sub-lease. These obligations will probably be similar to your obligations to your own landlord under your original lease. Thus, sub-letting involves a continuing management responsibility.

Your own lease contract will set out the conditions and restrictions governing any potential lease assignment or sub-letting.

What conditions would my landlord normally impose on an assignment?

Most commonly, your lease will permit assignment with your landlord’s consent, which must not be unreasonably withheld. In essence, your landlord will

be mainly concerned with the financial status of the ‘assignee’ – the prospective new tenant – about whom a considerable amount of information may be required. This might include three years’ audited annual accounts and a number of business trade references. A guarantee for the rent and the other obligations of the lease might also be required.

What if the landlord refuses to allow me to assign my lease?

If your lease allows assignments, you or your advisers should first try to negotiate with the landlord to see if he or she would allow the assignment with certain amendments. A guarantee or a rent deposit might tip the balance.

Lastly, you could mount a challenge through the court, which is likely to pay most attention to the financial standing of the proposed assignee.

What conditions would a landlord normally impose on a sub-letting?

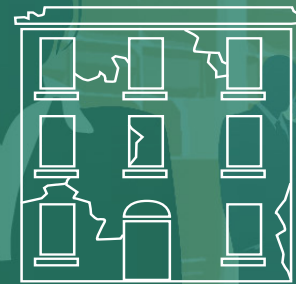
Again, it would depend on the terms of your lease. Your landlord would probably insist on approving the sub-tenant and the terms of your lease to the sub-tenant. Obviously, you cannot grant a lease to a sub-tenant which is longer than your own lease from your landlord.

Often your landlord will want your sub-tenant’s tenancy to be excluded from the security of tenure provisions of the Landlord and Tenant Act 1980. However, the landlord cannot insist that a sub-tenant be required to give up the right to security of tenure unless this was written into your original lease as a condition of any sub-letting.

Remember that your landlord will require you to fulfil the obligations of your own lease and it is up to you to deal with any breach by your sub-tenant of the sub-lease that you have granted.

Chapter 15:

Dilapidations



It can come as a nasty shock towards the end of a lease when the landlord requires extensive work from the tenant to remedy damage or disrepair or to put the premises back to its original state if the tenant has made internal alterations. If the tenant does not carry out this work, he or she may be required to pay the cost of having it done.

As a tenant you may be able to challenge the landlord's list of required repair work, referred to as a schedule of dilapidations. To be in a strong position to mount a challenge you need to consider the dilapidations question right at the outset, with the help of your Chartered Surveyor, before you sign a lease.

What are dilapidations?

The term is normally used to cover defects and disrepair which you as the tenant will be required to deal with or pay to have remedied when you vacate the premises that you have leased.

When do I need to start thinking about dilapidations?

Before you take a lease. A survey will establish the condition of the premises, giving an indication of work that may be needed, both immediately and later. If the premises are already in bad repair, special considerations apply (see below). During the term of the lease, regular or planned maintenance can avoid greater expense later. It is usually a good idea to record the condition and layout of the premises before you occupy.

What if the premises are in a poor state at the outset?

Most commercial leases require the tenant to put and keep the property in repair. Unless you and the landlord specifically agree otherwise, the fact that the premises were in a poor condition when you took them on is largely irrelevant. You still have to put them right. So negotiate for a lower premium or a lower rent to compensate for costs that you face. Alternatively, persuade the landlord to agree that the premises be returned at the end of the lease in a condition similar to the state in which you took them. In this case, after you have had the premises surveyed, make sure that their condition is established, recorded and attached to the lease as a 'schedule of condition'. Ensure that your solicitor varies the lease clauses to reflect the reduced obligations.

When is the landlord likely to submit a dilapidations claim?

Generally speaking, landlords do not serve dilapidations claims earlier than three years before the end of the lease. If you, as a tenant, have a statutory right to a new lease, the landlord probably will not serve a dilapidations claim unless or until you indicate that you are unlikely to renew your lease.

Any tenant is in the strongest financial position by doing any dilapidation work themselves and handing back the property in a similar condition as they took it. Most landlords want to get a cash settlement at the end of the lease so they retain control. As soon as the lease expires the tenant loses the right to do the work themselves.

Any tenant should request a terminal schedule of dilapidations at least one year before the end of the lease and receive it at minimum six months before the end of the lease. This will give the necessary time to negotiate and decide if they want to do the work themselves.

If no schedule is forthcoming from the landlord the tenant should commission a Chartered Surveyor to formulate an anticipated schedule of dilapidations so that the property can be handed back to the landlord in the correct state of repair.

What is the position on alterations I have made?

This depends on the terms of the lease and any licences that the landlord granted you to make alterations. On granting consent for alterations the landlord probably required that at the end of the lease you restore the property to its original state. Therefore, unless the landlord thinks your alterations have added value, you will probably be required to reinstate the property at the end of the lease or pay the cost. The exception is if neither the lease nor the licence for alterations gives the landlord the option of requesting reinstatement.

Do I have to accept the landlord's dilapidations claim in full?

No, do not accept it without taking professional advice. A Chartered Surveyor may be able to reduce the figures and/or demonstrate that certain items should not have been claimed. The landlord may not in fact intend to repair the property; he or she might plan to demolish or alter. In these circumstances you would have a good defence in law to the claim because landlords should not claim for more than they have actually lost.

What if I cannot reach a compromise with the landlord?

If you cannot reach agreement, the landlord has recourse to the court, but this is a slow process and expensive for both sides. Landlords and tenants will generally avoid it if they can. Consult your solicitor as well as your Chartered Surveyor if things look like they are taking this course – in a court hearing your Chartered Surveyor will be able to act as an expert witness on your behalf. Alternatively, disputes can be resolved by mediation, expert determination or arbitration. The SCSA has a list of accredited experts and arbitrators who can be appointed by both landlord and tenant to resolve the dispute.





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Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

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Since 1783, Dublin Chamber of Commerce has brought business people together to share ideas, to form a single voice for the local business community and to ultimately connect and grow business. Today, Dublin Chamber represents over 1,300 companies, or an estimated 350,000 employees, from across more than fifty recognised industry sectors, from sole trader business people to multi-national corporations.

We understand business and we are sensitive to the challenges that companies are faced with in a post-bail-out Ireland. We know the path to sustained growth and opportunity for companies is building relationships through our ever-expanding network.

Our events programme offers our members an opportunity to build a B2B network, to learn best practice and to profile their business. We organise more than one-hundred events per year, taking into consideration the needs of our members.

On the policy side, we listen to our member companies; we hear their concerns and speak on their behalf, focusing on business competitiveness and on the competitiveness of the Dublin region. We also work with central and local government to pilot innovative projects to help better the city in an initiative called Activating Dublin.

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