FRI Leases

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The Caesar& Howie Group
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An FRI lease is the abbreviated term for a lease which imposes full repairing and insuring obligations on the tenant, relieving the landlord from all liability for the cost of insurance and repairs. Many leases of commercial property will be of this type, with the landlords heavily protected to ensure they have as good an investment as possible by passing on as many costs as possible to the tenant. It is important however to point out that there are other forms of commercial lease available which are less onerous for tenants. These generally are for shorter terms and for smaller premises and usually relate to more modest commercial activities. They are not dealt with in this article.

The repairing obligation is likely to stipulate at the outset that as at the date of entry, the tenant accepts the premises in 'good and tenantable condition and repair and fit for the purpose for which they are let' or similar words, whether or not they are. The tenant, if he accepts this, is thereafter obliged to repair, maintain and renew the premises in that state throughout the currency of the lease and, perhaps most importantly, to hand them back in that state at the end of the lease. It is important, before accepting that obligation, for the tenant to ascertain whether the premises actually meet this hypothetical ideal. Usually a building surveyor will be instructed who will highlight any problem areas. Should the premises be in poor condition, several options may be open to the tenant. One option would be to have the building brought up to standard by the landlord prior to taking occupation—*i.e.* to ensure that on the date of entry they are in 'a good and tenantable condition and repair and fit for the purpose they are let'. An alternative would be to carve out certain items from the repairing obligation, for example the roof. A further option would be to annex to the lease a schedule of condition highlighting the state of the premises at the date of entry and specifying that the premises will be returned in no worse, but no better, condition than as they are at the date of entry as evidenced by the schedule. Any of these options acts as a limitation on the 'full repairing' obligation in the lease. . A tenant may also wish to exclude fair wear and tear and/or latent and inherent defects from the repairing obligation. Proceeding with any of these options is subject to reaching agreement with the landlord.

In relation to the insurance provisions in an FRI lease, in the majority of cases, the landlord insures the property with the tenant repaying the premium to the landlord. The landlord will usually insist on insuring the property as he or she is then in control and can ensure that the property is properly insured at all times. In this situation, the tenant should ensure that, if the premises are destroyed or damaged to such an extent that they need to be rebuilt, the lease provides that the landlord, not the tenant, is responsible for the shortfall if the insurance monies turn out to be insufficient to meet the cost of re-building as a result of the landlord underinsuring the property. In the case of damage / destruction it will usually be provided that the lease will not terminate under the common law provision of *rei interitus* **(that is, that the lease will terminate automatically if the premises are destroyed)** and the lease is likely to continue at least for the time it would take for the premises to be rebuilt taking into account demolition, planning etc—normally for up to three years. The lease should provide that in those circumstances payment of the rent is to be reduced rateably to match the extent of the damage provided the damage or destruction is as a result of an insured risk. The lease will usually provide for the landlord to insure not only the building (and professional fees) but also for loss of rent for a period, normally up to three years. The scope of the insured risks should be as comprehensive as possible, and if possible the tenant should seek to include an option to request additional risks to be insured if necessary.

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The termination of a lease can often be an issue. Although the lease specifies a start date and a finish date certain procedures have to be followed to ensure that the lease is terminated on the finish date (known as “the ish”). If either you or the landlord wishes to terminate the lease at the ish, a notice has to be served in the way provided for in the lease AT LEAST FORTY (40) days before the ish, unless there is a different period in the lease, which is unusual. Scots Law provides that if not properly terminated in this way, the lease will automatically continue on the same terms and conditions for a further year. If the lease is to be terminated at the end of that further year, again the notice has to be served and again there are time limits for doing so. You should keep a detailed diary note of the relevant dates so that you can instruct us in good time to serve the notice if that is what you want. We do not keep a record of any such dates and will not issue any reminders that the finish date of the lease is approaching or when the notice needs to be served by.

You may also have read about FRI leases on the internet. Most of the comments about such leases are based on English Law. One major difference between leases in England and in Scotland is that in Scotland, there is no implied term that a landlord has to act reasonably. If the landlord is to act reasonably it must be written into the lease itself. Another is that there is no automatic entitlement to an extension of the lease when it reaches the finish date.