



## **Guide to Lease renewals by Ken Newton of the AVLP**

Prior to 11<sup>th</sup> July 1992, licensed premises did not have security of tenure afforded by Part 2 of the Landlord & Tenant Act 1954. However, since that date and a change in legislation given by the L&T (Licensed Premises) Act 1990, public houses, as well as other licensed premises are entitled to protection in line with other business tenancies and tenants are allowed the opportunity of having the lease renewed. It's this new landscape that I will try and outline, but first a brief re-cap on the events thus far:

The Beer Orders in 1990 changed the way pubs were operated and in effect, created the pub companies of today. Intreprenuer commenced their leasing programme in March 1988 with the granting of 20 year FRI and assignable leases and they were shortly followed by the Bass, Vanguard and Whitbread lease with 10 – 20 year terms. All these companies no longer exist in name but the pubs are still operated by likes of Enterprise Inns and Punch Taverns who are pub companies that now only let fully tied houses, apart from a few individual houses, and with Wellington Pub Co. still offering free of tie pubs.

Despite the length of the lease which can sometimes be up to 30 years, all these leases are protected under the L&T Act. Assuming as in most cases a pub is protected then the Landlord can only terminate a lease at the end of the term by serving what is known as a Section 25 Notice indicating whether or not he will oppose any application to the Court for a new tenancy.

A S25 Notice can only be served not less than 6 months and no more than 12 months before the termination of the lease term. Time is not of the essence and therefore if a Landlord fails to serve such a notice then he can do so at any time after the lease has expired. In such a case a tenant is deemed to be "holding over" on the same terms and paying the same rent.

Tenants must be aware that it is very important that once a S25 Notice is received they must take immediate action. In this respect reforms were made to the 1954 Act that came into effect on 1<sup>st</sup> June 2004 changing the procedures to be followed when renewing or terminating business tenancies. Previously once a S25 Notice had been served the tenant had to issue his Landlord with a counter notice within 2 months of the date of the Notice

indicating whether or not he was willing to give up possession. This was seen as a trap for the unwary tenant who could lose his protection if he failed to respond within the 2 month period. However reforms were made in June 2004 and changes were brought about by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. This basically provided that now there is no need to serve a Counter Notice but it is very important that the tenant makes an application to the Court before the date specified in the Landlord's S25 Notice.

It is provided that when serving a S25 Notice the Landlord must attach a schedule with proposals for the grant of a new tenancy. Bearing in mind the S25 Notice will normally be served more than 6 months prior to the termination of the lease, the tenant will have sufficient time to discuss the proposals and hopefully negotiate satisfactory terms. However, if agreement cannot be achieved then the Landlord or the Tenant must apply to the Court for a new tenancy before the termination date in the Notice, although both parties are also able to extend the time limits by agreement in writing.

Once Notice has been served indicating the Landlord's proposals it is here that tenants really need professional advice. The tenant is entitled to a renewal of his lease on the same terms and conditions apart from the rent and this of course is the most contentious part of the negotiations. A Landlord will use this opportunity to negotiate changes in the current lease such as a sharing of the machine income, removal of a guest ale right to a full beer tie and the installation of beer monitoring equipment where none of this was provided for in the current lease. Another change that is common in most Pubco and Brewer's leases nowadays is that rent will be increased annually in line with inflation as well as the usual 5th year open market rent review. This is a very contentious issue at the present time and although inflation at the moment is very low, we all know that in the early 1980's inflation was in the double figures and when interest rates start rising this will reflect in the RPI and have a major impact on the rent. A Landlord may well say these are now standard terms and conditions in their lease and must be incorporated, but remember this is a renewal of a lease on similar terms (apart from the rent) and not the granting of a new lease in an open market situation.

If all else fails and both parties cannot agree terms then the Courts can decide, however it is not in either side's interest for a judge to determine the rent and terms of the lease. If a 20 year or more term was granted under the original lease then the maximum term a Court can order since June 2004 is now 15 years (previously 14 years). It has to be accepted that older leases may need updating to incorporate modernisation and changes in legislation.

An alternative to the County Court Judge deciding the terms is for both parties to agree on an alternative method of dispute resolution known as PACT (Professional Arbitration on Court Terms) which were introduced under the Civil Procedure Rules in April 1999 and were part of the Woolf Reforms. PACT only applies to lease renewals with the objective being that it provides a more effective and flexible solution to lease disputes rather than expensive litigation. With PACT both sides can agree that a professional licensed

property surveyor will act in the capacity of a judge and decide the new lease terms with written submissions being received from both sides. This can be seen in some respects as similar to an arbitration.

There may be instances where a Landlord has not served a S25 Notice and this could be where in a particular case rental values have fallen and the Landlord would not want to risk a new lease at a reduced rent. However, in such a case, within 12 months from the end of the term the tenant can serve a S26 Notice on the Landlord and this basically is a tenant's request for a new tenancy where similar rules as above would prevail.

Many of you reading this article will have experienced pub lease renewals as although the first Intrepreneur 20 year leases started to expire in 2008 the early Bass and Vanguard leases have already expired and I am sure some Landlords have tried, maybe successfully, to impose changes in a renewal of a lease to suit their own requirements and comply with what they say is Company policy. However remember the tenant also has rights and if in any doubt I would strongly advise they take good professional advice and there are many good suitably qualified surveyors who are members of the AVLP and are ready and willing to offer such advice.

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