



Heads of Terms in Commercial Property Transactions



Preliminary

Heads of terms are used in many types of property and commercial transactions to provide a written record of the main terms agreed between the parties. They allow the parties to agree important terms before legal costs are incurred and can help to identify issues that may prevent the transaction from proceeding as planned. Heads of Terms should be expressed to be "Subject to Contract" and should contain wording to show that it is not the parties' intention to create any legally binding obligations at this stage. If there are any pre-contract matters which the parties do not want to be legally enforceable, those should be kept separate from the heads of terms.

As the heads of terms will be used by the lawyers as a guide when preparing the formal documents, it is important to make sure that they accurately reflect the terms that have been agreed between the parties.

What should the Heads of Terms contain?

Typical items covered in the heads of terms will include:

- a description of the property;
- the price or rent;
- the length of any lease term;

- the responsibility for repairing and insuring the property if it is leasehold;
- any restrictions on the use of the property; and
- any rights (such as rights of way) granted or reserved.

Sometimes other terms, such as a provision for a seller to receive a share in any future development value of the property, can be included and can look innocuous to an inexperienced buyer, who only discovers the full implications for the future use of the property (not to mention his wallet) when it is too late.

Negotiating the Terms

There is usually room for negotiation, so a prospective buyer or tenant should make sure that he understands what is on offer by taking advice from a solicitor or surveyor before agreeing to any heads of terms. The purchase price or rent can also be affected by the terms of the deal: not surprisingly, the more onerous the terms, the lower the price or the rent should be.

However, once the heads of terms have been sent out and incorporated into the draft documents, it can be difficult to renegotiate what the seller or landlord may regard as a done deal. If a term is unsatisfactory, it's much easier to keep it out of the legal documents by removing it from the heads of

terms than to delete it from the sale contract or lease later on.

Good advice taken at the outset can help to avoid misunderstandings and speed up the agreement of the draft documents later on. We are happy to agree a budget for preliminary advice.



We would like to thank each and every one of you for your professional help and close attention to this matter. We couldn't have done it without you!

Simon and Margery Walshaw
Beaumont & Walshaw

Do you need more information?

For more information contact:



James Hunt

Location: Oxfordshire
Direct Dial: +44(0)845 868 0962
james.hunt@everymanlegal.com



Rob Jonckheer

Location: Oxfordshire
Direct Dial: +44(0)845 868 0963
rob.jonckheer@everymanlegal.com



Stephen Evans

Location: Birmingham
Direct Dial: +44(0)796 393 1830
stephen.evans@everymanlegal.com



Ed Burrell

Location: Oxfordshire
Direct Dial: +44(0)845 868 0964
ed.burrell@everymanlegal.com

© Everyman Legal Limited 2011 - 2013

Important Notice

This memorandum is designed to provide a general commentary on aspects of the subject matter covered. It does not purport to be comprehensive or render legal advice. Everyman Legal Limited and the author expressly disclaims any liability in respect of the consequences resulting from acting or refraining from acting on the basis of any matter contained in this publication.

All rights are reserved

