



Heads of Terms in Commercial Property Transactions



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Heads of Terms in Commercial Property Transactions

Heads of terms – a summary of the main parts of a deal – are used in many types of property transactions to provide a written record of the terms agreed. They should be expressed to be “Subject to Contract” and contain wording to show that it is not the parties’ intention to create any legally binding obligations. 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.

Typical items 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.

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.

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