What’s your exit strategy?
What are your options when leaving Commercial Premises…

There comes a time for many businesses when they have either outgrown their commercial premises or need to dispose of their interest because of commercial constraints. In both circumstances, you should be aware of the options that you have available to you and the pros and cons of each option.

For tenants, the options you have available to you will depend on the terms of the Lease under which you are occupying the premises. These options include:

1. Assignment
2. Underletting
3. Exercising a break
4. Surrender
5. Forfeiting your interest
1. Assignment

Most leases have the benefit of the right to assign the leasehold interest. This is the equivalent of transferring your tenancy to another person or company who will take over the lease from you. Depending on the term of the lease, you will likely be able to charge a premium for the interest that you are transferring.

**Advantage:** allows you to dispose of your interest, often for a fee.

**Disadvantage:** you will very often continue to be liable for the incoming tenant’s ability to meet the terms of the lease and will have to pay the Landlord’s legal fees.

2. Underletting

Underletting is the process of creating a tenancy of your own. Effectively, there are three parties in such a situation; your Landlord (the Head Landlord), yourself (the Head Tenant) and your own tenant (the Sub Tenant). If you just need to release yourself from the expensive overheads that come with occupying a premises – and your lease permits underletting – it can be a good way of covering your expenses.

**Advantage:** creates flexibility if you wish to occupy the premises at a later date.

**Disadvantage:** you remain contractually liable and will be responsible for paying the Head Landlord’s legal costs.

3. Break Clause

If your lease incorporates a break clause, you have the opportunity to terminate the lease on that given date (if it is a specific date) provided you have complied with the terms of the Lease and served a valid notice.

**Advantage:** unlike underletting and - to a lesser extent - assignment, it is a clean break.

**Disadvantage:** break clauses very often give the Landlord the right to break also meaning that, if you did want to stay, there is a risk that the Landlord may not feel the same way.
4. Surrender

In certain situations, both parties may agree to terminate the lease by surrender. Where the Tenant has instigated proceedings, there will generally be a premium that is paid for leaving the lease early and short-changing the Landlord of guaranteed rent. Where the Landlord has sought to bring the lease to an early expiration, the Tenant may receive a premium from the Landlord for the rights of occupation that they are losing.

**Advantage:** if an agreement can be reached, it can be a beneficial clean break for both parties.

**Disadvantage:** it requires both parties to reach an agreement on surrender and can be quite an expensive exercise.

5. Forfeiture

Forfeiture is the least desirable of outcomes for both parties and, generally speaking, should not be considered an ‘option’ for getting out of a lease. Forfeiture of a lease occurs when a Tenant fails to comply with the terms of the lease – be it non-payment of rent, failure to repair or some other form of breach.

**Disadvantage:** unlike surrendering a lease (where there is an agreement between the parties) this is very much a decision enforced on you as the tenant.

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