

# Red Flag Checklist

## For Service of Commercial Leases Notice



This checklist applies **only to commercial property leases**. It does not cover any other type of lease, such as residential or agricultural leases. The checklist has been produced in association with Brodies LLP.

| Acting for tenant or landlord |   | LANDLORD  | TENANT                              |
|-------------------------------|---|---|-------------------------------------|
|                               |   | <b>NOTE:</b> <u>notices to quit are personal</u> to the landlord and cannot be relied on by successors. If the property is sold before the notice has expired, the benefit of the notice should be assigned to the purchaser. |                                     |
| Step                          | Action:   | Tick once complete or confirmed.  | Second pair of eyes check complete. |
| 1.                            | Checking Instructions   |   |                                     |
|                               | Client verification checks have been made and solicitor is absolutely clear as to what the client wishes to achieve.  |   |                                     |
|                               | Examining the Document  |   |                                     |
| 2.                            | All notice provisions in lease, including any lease variations, have been checked. These might be contained in the relevant clause (e.g. break clause in a lease) but there may be others in a separate Notices provision, applying to any notice served.           |   |                                     |
| 3.                            | The notice as drafted complies with the lease notice provisions and with statute or common law (or with statute or common law only if there are no notice provisions in the lease).   |   |                                     |
| 4.                            | Method of service has been checked and conforms to the lease; notice must be served in the prescribed manner (or by Royal Mail First Class Recorded Delivery if not prescribed by the lease). Please check correct method of service if recipient is not in the UK. |   |                                     |
| 5.                            | The client has authority to serve the notice; the client has right to exercise e.g. not personal to a previous Tenant.  |   |                                     |
| 6.                            | None of the relevant provisions have been amended by subsequent documents.  |   |                                     |
| 7.                            | Solicitor has checked for any longstop for service of the notice and does NOT rely on any previous Report on the document.  |   |                                     |

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| 8.  | <p>If a payment must be made to exercise a right (in addition to service of the relevant notice) solicitor has:-</p> <ul style="list-style-type: none"> <li>checked and verified the amount to be paid</li> <li>diarised exactly when the payment must be made</li> <li>has cleared funds from the client in advance of that date</li> <li>obtained bank account details for the payment from the recipient's solicitors</li> </ul>   |  |  |
| 9.  | <p>The time limit for service of the notice has been checked and verified:-</p> <ul style="list-style-type: none"> <li>If it says eg "3 months" then give exactly 3 months (but adding in any time for effective service – see below).</li> <li>Factor in any extra time for effective service – e.g. document may provide that notices are treated as served 2 days after the date of posting.</li> </ul>  |  |  |
| 10.   | Lockton's "Notice to Quit" Calculator has been completed.   |  |  |
| 11,   | <p>The requirements for the content or form of the notice have been checked.</p> <p>Does the lease require:-</p> <ul style="list-style-type: none"> <li>That the relevant clause is mentioned in the notice?</li> <li>use of a particular style of notice set out somewhere in the document?</li> </ul>   |  |  |
| Verifying the Current Parties and Addresses |   |  |  |
| 12.   | <p>The current identity and relevant address(es) of the party(ies) on whom the notice is being served has been checked. The companies register has been checked for any current registered office or other reliable information to verify current address of a non-corporate recipient.</p> <p>NEVER serve a notice on a managing agent or the like in place of the actual tenant or landlord unless the lease specifically requires you to do so. Please also note that a lease might require any notice served on the Tenant to be copied, at the same time, to a Guarantor or to a secured creditor.</p>   |  |  |
| 13.   | The party who must serve the notice has been checked. A notice may have to be served by a particular party.   |  |  |
| 14.   | The solicitor has checked where the notice to the relevant party is to be sent/delivered. (E.g. whether to registered office or to the premises or somewhere else or any combination of addresses).   |  |  |
| 15.   | <p>If notice is on a property owner or landlord, a search has been made of the property register to confirm current owner or landlord. Solicitor has carried out all other checks in this checklist and is NOT solely relying on clients' information based on person who sends them rent demands or who managing agent appears to represent.</p> <ul style="list-style-type: none"> <li>Check client has not received recent notice of any change of Landlord.</li> <li>Unless the lease requires the notice to be served on an agent of the landlord, solicitor should serve it on the landlord NOT the agent (agent might be sent a copy but landlord must receive principal notice).</li> </ul> |  |  |



|                            |   |  |  |
|----------------------------|---|--|--|
| 16.                        | <p>A search of the companies register has been made to check current names of relevant parties (including the client) – ideally linked to the company number which appears in the document. If no company number, then ensure that the party you think is the recipient did have the name set out in the document on the date the document was executed by that party. <a href="https://find-and-update.company-information.service.gov.uk/">https://find-and-update.company-information.service.gov.uk/</a></p> <p>Also ensure the company upon whom the notice is being served is incorporated in the same country as referred to in the document (e.g. do not serve a notice on UK company, when the company in the document was incorporated in Jersey) – they could have the same name but be different companies.</p> |  |  |
| Filing and Other Processes |   |  |  |
| 17.                        | <p>The following has been saved to the file, dated the same date as the date the notice was issued:</p> <p><b>1.1</b> if you acting for the tenant, the Legal Report;</p> <p><b>1.2</b> if the lease is registered in the Land Register, the Legal Report over the tenant’s interest; and</p> <p><b>1.3</b> if the addressee is a company registered at Companies House, a Companies House Direct screenshot verifying its registered number coincides with that of the required addressee and its current name and registered address.</p>   |  |  |
| 18.                        | <p>If acting for the tenant, the LBTT submission has been drafted and has been diarised to issue on time.</p>   |  |  |
| 19.                        | <p>Once all of the above Steps have been completed by the Fee Earner the following documents have been passed to the person carrying out the Second Pair of Eyes check:</p> <p><b>1.4</b> the draft notice;</p> <p><b>1.5</b> the completed posting slip (e.g. recorded delivery slip);</p> <p><b>1.6</b> the lease and any relevant lease documents (e.g. assignments or variations);</p> <p><b>1.7</b> copy rent invoice;</p> <p><b>1.8</b> all Companies House print outs or other evidence of addressee identity, name and address as applicable; and</p> <p><b>1.9</b> the Legal Report, if applicable.</p>  |  |  |

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