

Guidance No. 3 – The Basics of Asset Transfer

MODE OF ASSET TRANSFER

Do you know that Asset Transfer is not just about transferring a building or land on a freehold basis? A lot of people think this is the case. They are wrong!

Indeed, there are various ways of transferring the asset to the community. Below are the most common ones.

Freehold

This is absolute 'ownership', which gives a right to use the property as the community see fit (subject to planning consent, and the restrictions and other matters registered (as covenants) on the building with the Land Registry, for example, any right of way or outstanding mortgage).

Grant of a long lease

A long lease could be between 125 - 999 years. This type of acquisition usually requires the payment of a premium or purchase price, as would be the case if you were acquiring a freehold. It may also include a requirement to pay a ground rent and a service charge to the Freeholder (this is sometimes a nominal sum). It can be entered into by incorporated organisations or nominated individuals.

Lease

Taking a lease for a fixed period of years at annual or 'rack'¹ rent.

Assignment of an existing long lease

This is the acquisition of an existing leasehold interest from the previous tenant (known as an assignment). Where a lease is being taken by assignment, there is often less scope to alter the original lease terms.

Tenancy agreement

A verbal or written open ended agreement with a monthly, quarterly or annual rent and which can be terminated by either side giving notice

License

This is a short term agreement often between 6 months and 2 years. A license is most often used with a building occupier who does not have exclusive access to the space, for example where a couple of desks are let out in an office, or in managed workspace where tenants can be moved about if necessary. The terms of this type of agreement are generally 'easy in easy out' requiring

¹ In modern usage, a rack rent is usually a rent that represents the full open market annual value of a holding, often simply called the market rent. Less frequently, a rack rent may also be "the maximum rent permitted by law", or an extortionate rent (Source: <http://property.practicallaw.com/0-107-7102>)

relatively short notice to terminate by either landlord or occupier (often a month). A license does not, if properly worded, provide a legal interest in land, or building, or security of tenure, beyond the agreed terms stated in the license.

Tenancy at will

Permission (verbal or written) to occupy for a short period (usually up to one year); can be terminated by either side giving notice.

Buying the asset at less than market value

Local authorities are empowered to transfer the ownership of land and buildings to communities for 'less than their market value'. This is known as 'discounted asset transfer' or 'asset transfer'.

Associated agreements – often entered into in asset transfers in addition to leases/licenses which give a right to occupy.

A management agreement is an agreement between the local authority (or owner), and another organisation to work together in the operation of the building for the benefit of local people. It does not give any rights to occupation, security or legal interest in the building.

A service level agreement is an agreement for an agreed period, between two partners, setting out the service to be provided in return for resources, usually financial or staffing. Performance requirements and quality standards will be set as part of the agreement as well as procedures for monitoring and review. They are sometimes required in order to enable a peppercorn rent² to be justified for a community building, since such an agreement allows a monetary value to be put to services that equate to a rental income lost to the local authority.

The key to a successful community asset transfer is the ability of the recipient community organisation to effectively run and manage the asset so they can deliver their social, economic and environmental objectives to the community, and/or generate income from it for the sustainability of the asset and their organisation. The types of tenure or mode of transfer of the asset transfer also plays a vital role.

Sources:

- DCLG, (2008). *Managing Risks in Asset Transfer - A Guide*
- DTA (2009). *Cascading Assets Programme Training Hand-out*

² a very small amount of money that is paid by someone who is renting a building or piece of land so that the arrangement between them and the owner of the property is legal (Source: <http://dictionary.cambridge.org/dictionary/business-english/peppercorn-rent>)