

1. Generally speaking, business tenants have a right to remain in occupation of the premises after their lease expires and to apply to court for the grant of a new lease. However, this right to security of tenure should be excluded in certain circumstances.
2. Before 1 June 2004, a contract for a lease was offered to business tenants, a three-step procedure must be followed in order to exclude the security of tenure. The procedure is set out below. A failure to follow the procedure will result in the tenant acquiring security of tenure.
 3. Step 1 – notice
 - 3.1 The landlord must give the proposed tenant a written notice which contains a "health warning" explaining the effect of entering into the proposed lease. This notice explains to the proposed tenant the consequences of losing security of tenure.
 - 3.2 The notice must be given to the proposed tenant before the lease is entered into or before the tenant becomes contractually bound to enter into it. So, if there is to be an agreement for lease, the notice must be given before the agreement is entered into.
 - 3.3 The landlord should give the notice to the proposed tenant until the terms of the new lease are agreed and the lease is in its final form. If the notice is served after all the terms have been agreed, it may not be valid.
 4. Step 2 – declaration (simple or statutory)
 - 4.1 Once the landlord's notice has been given to the proposed tenant, the landlord must make a simple declaration or swear a statutory declaration.
 - 4.2 If the landlord's notice is given 14 days or more before the lease is granted (or, if applicable, before the lease is entered into) the tenant must sign the "tenant's simple declaration".
 - 4.3 If the landlord's notice is given less than 14 days before the lease is granted (or, if applicable, before the lease is entered into) the tenant must swear the "tenant's simple declaration" before an independent solicitor, i.e. a solicitor who is not the landlord or the tenant in relation to the lease.
 - 4.4 Both declarations are made in the presence of the tenant and they both confirm that the tenant has received the notice containing the "health warning", that the tenant has read and understood the notice and that the tenant accepts the consequences of entering into a lease without security of tenure.
5. Step 3 – reference in lease
 - 5.1 The new lease must refer to the landlord's notice, the simple declaration or statutory declaration and the parties' agreement to exclude security of tenure in accordance with sections 24 to 28 of the Act.
 - 5.2 It is good practice to refer to the landlord's notice and the tenant's simple declaration in the lease.

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