

WHAT LURKS AROUND THE CORNER

Did you know that when a building is to be sold or rented out the seller or landlord is bound to provide any prospective buyer or tenant free of charge and at the earliest opportunity with a valid Energy Performance Certificate? He must also provide a recommendation report on ways of achieving improvements in energy and environmental efficiency impact ratings.

The EPC must be provided by whichever of these events first occurs in a proposed sale or letting:-

1. The seller or landlord provides written information about the building to a person who has requested it
2. A prospective buyer or tenant views a building
3. A contract is entered into to sell or rent out the building – it is the duty of the seller or landlord to ensure that the ultimate buyer or tenant has actually received a valid EPC

So what is a building?

The rules provide that it is “a roofed construction having walls for which energy is used to condition the indoor climate”. This includes buildings that have fixed heating, mechanical ventilation or air conditioning but does not include buildings that only have hot water or electric lighting.

What is not a building?

An EPC is not required on the constructions, sale or rent of temporary buildings with a planned time of use not exceeding two years or industrial sites and work shops with low energy demand or buildings used primarily or solely as places of worship.

Exceptions

The exceptions are quite complicated so that for example a building which has the purpose of accommodating industrial activities in spaces where the air is not fully heated or cooled, e.g foundries, forges, food and drink packing plants, storage and warehouses, non-residential agricultural buildings with low energy demand (those

heated for a few days each year to enable plants to germinate but otherwise not requiring to be heated) and stand alone buildings with a total useful floor area of less than 50 sq metres which are not dwellings. Such buildings may have local heating or cooling appliances to serve people at work stations but are still exempt from EPC requirement.

Another exemption applies to buildings that are to be demolished provided it can be shown that such a building is being sold or rented with vacant possession, is suitable only for demolition on a site suitable for redevelopment or the seller or landlord has reasonable grounds to believe that a prospective buyer or tenant intends to demolish.

Note that selling or renting out would include the assignment of a lease or grant of a sub-lease although lease renewals or extensions, compulsory purchase orders and lease surrenders are not included.

I have gone through the various exclusions and exemptions so that you can see for yourself how many types of buildings are included.

In general EPC's are valid for 10 years whereas a HIP cannot be more than 3 years old when the building is first marketed.

Who pays for the cost of an EPC?

Generally speaking it is the seller or landlord although it is possible for a landlord to recover at least part of the cost through a service charge or the parties agree to split the cost between them.

Readers who have bought and sold domestic properties in the last two years or so will be familiar with the EPCs included in HIPs but it is quite surprising how few landlords are aware that their properties do not fall within the exemptions that I have mentioned.

HIDDEN EXTRAS IN LEASES

It is surprising how many hidden additions there may be to basic rent.

All Landlords like to recover as much as possible and preferably 100% or more of all outgoings on let properties. With residential lettings you may find not only costs going in such as a rent deposit to pay but also costs going out such as the cost of a

professional cleaner making good any damage to decorations or Landlord's Inventory and the associated costs of examining the property. With longer term leases or leases of part of a building such as a flat or apartment you will probably have to pay a Service Charge and Insurance Costs and these really do want careful scrutiny. Examine the recent year's accounts and get details of any budgeted expenditure. The cost of a new roof or exterior decoration where scaffolding is required can be very high. Certain management services can have VAT added. All Leases over 7 years either new or old with more than 7 years to go have to be registered at the Land Registry which can be quite a complicated process if new scale plans are required and the freehold title is unregistered. Some Leases may also attract stamp duty land tax.

Commercial add-ons

With commercial premises, even a small shop, you may have to pay VAT on the rent as well as services. If your business is not registered for VAT this can be a very expensive add on. You may also be required to pay the Landlord's legal costs of production and grant of the Lease although that is rather optimistic in the current retail shop market. Would be tenants should be looking for inducements like a rent free period of say 3 months to get a business under way. There are also electrical, fire safety asbestos and other health and safety reports required, as my regular readers will know.

In all cases there will be insurance to take into account to protect the Landlord's interests in the building and for public liability. Then there are outgoings like rates / council tax, utility services and perhaps car parking.

Be warned

The message is clear go in with your eyes open, ask all the right questions and consider getting a professional to do it for you especially with longer term lettings. For short terms try and get an all inclusive figure for rent with no hidden extras.

ACTION

Whether you are buying or selling property, there is much to consider. It can be an absolute minefield. So take good legal advice as soon as you can. Here at Busbys, I head up one of the most experienced property departments in the West Country. We

hold the coveted Lexcel award – Lexcel stands for “legal excellence”. So do get in touch. You can contact me, David Helman, on **01288 35 9000**. I look forward to hearing from you.

David Helman

Solicitor & Notary Public

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