

The Society of
Chartered 
Surveyors

**Chartered Surveyors survey indicates market forces have already
overtaken new ban on upward only rent review clauses**

Figures show landlords and tenants are negotiating adaptable leases

Wednesday, 2nd December 2009: A survey conducted by the Society of Chartered Surveyors in October last has confirmed that the nature of commercial leases being negotiated between landlords and tenants has already changed, despite the Minister for Justice Dermot Ahern's decision to sign an order banning upward only rent review clauses, which will come into effect on 28th February 2010.

The survey, conducted amongst members of the Society of Chartered Surveyors, just weeks ago, was undertaken in order to assess the changes that have now taken place in the market since Minister Dermot Ahern enacted enabling legislation.

Responding to the latest developments, Director General of the Society, Ciara Murphy, said 'The commercial property market had already adapted to the changed economic circumstances, as identified in our earlier members survey conducted during the summer months and will no doubt continue to do so. In this up to date survey, 96% of our members, who represent both landlords and tenants, have confirmed that the nature of leases being granted has changed with almost half of the new leases granted in the retail sector incorporating turnover based reviews. An overwhelming 91% of

respondents indicated that shorter term leases are being secured which are unlikely to contain any rent review clause.'

The survey also confirmed that variations are being granted in current leases despite an upward only rent review clause. 95% of respondents confirmed this to be the case with a further 80% indicating that other variations have also been granted. 'It was always the view of Chartered Surveyors that market forces would determine the nature of leases going forward in changed economic circumstances and our survey has proven this to be the case', said Murphy.

According to Senior Vice President, Peter Stapleton, this change in legislation will have a negative effect for pre-funding of developments as there will be no certainty of rental flow into the future. Private investors will be required to put increased equity into acquisitions over and above the increased equity that the banks are going to require anyway as lending criteria and regulation gets tighter. Inward investment, which is so desperately needed, will be affected as will investor's confidence. The market will be less liquid and of course stamp duty prospects for Revenue on commercial transactions will not look good.

'Substantial concessions have been an important part of lease deals offered to tenants by way of rent free periods or fit out allowances, but under the new regime this substantial trade off will not be possible, as no contracting out provision is provided for', Stapleton said.

For Further Information

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Editors Note: 861 Chartered GP/Valuation Surveyors who are members of the Society of Chartered Surveyors were surveyed in October 2009. A total of 203 responses were received representing a response rate of 24%.