



# BREXIT FOR LEASE HOLDERS

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**FEBRUARY 2019**

Joining a long line of people frustrated by Brexit, the European Medicines Agency (EMA) have gone one step further, claiming that Brexit has frustrated their lease.

An agency of the EU, the EMA has claimed that it must relocate back to continental Europe after March 29th. As a result it must close its HQ, which is based in an office building located in Canary Wharf, where it currently holds a 25 year lease over 10 floors, and which otherwise does not expire until 2039.

Frustration (in a legal sense) occurs when an unforeseen event happens after the contract has been formed which subsequently makes the contract impossible to perform. To demonstrate frustration, the EMA will need to show that the frustrating event is:

- "entirely beyond what was contemplated by the parties when they entered the contract";
- "should not be an event which could have been foreseen by the parties"; and
- "must render further performance impossible, illegal or makes it radically different from that contemplated by the parties at the time of the contract."

The EMA's Landlord has referred the matter to the High Court, which will need to decide if Brexit is a frustrating event for the purposes of the EMA's lease. It is highly likely that given the sums involved and the consequences of a decision either way that whatever the outcome, the decision will be referred to the superior courts. The court's decision will be of great interest not only to Landlords and Tenants, but will have a far reaching effect on commercial contracts.

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