



Leasing, Buying and Selling Industrial, Retail and Commercial Premises

Some of the most commonly asked questions about Leasing, Buying and Selling Industrial, Retail and Commercial Premises are discussed on this page.

1. What constitutes retail premises?

Generally there are three types of premises which can be subject to a commercial lease. These are retail (eg shops), commercial (eg office space) and industrial (eg factory/warehouse and industrial units). The Conveyancing Act normally regulates the leasing of these types of premises, however, retail shop leases are also regulated under the Retail Leases Act.

The Retail Leases Act applies to all premises carrying on any business in a retail shopping centre and also covers specific 'Scheduled' businesses whether or not they are in a retail shopping centre. Examples of businesses covered in the Schedule 1 to the Retail Leases Act are beauticians, convenience food shops, hairdressers, fruit and vegetable shops, mixed business shops, newsagencies, pharmacies, coffee lounges, second hand goods shops, sporting goods shops and variety stores. As Schedule 1 is constantly being updated should you have any queries about whether a particular business is covered by the Act please contact us.

2. Who pays the cost of preparing the Lease document?

Normally in regard to commercial and industrial premises, the landlord can require that the tenant pay the legal costs and disbursements involved in the lease transaction. Disbursements usually associated with a lease transaction can include title search fees, registration fees, and mortgagee consent and production fees.

In respect to retail leases however, since the 1st July, 2005 landlords are no longer able to recoup the cost of preparing a retail lease document from the tenant. The landlord can, however seek reimbursement of costs in connection with making any amendments to a proposed lease which have been requested for or on behalf of the tenant and the disbursements for registering the lease.

3. What stamp duty is payable on a Lease?

Stamp duty on commercial leases was abolished by the State Government on 1 January 2008 in respect to all leases entered into after that date.

4. Does the Lease have to be registered?

If the term of the lease is for a period of more than 3 years including any option period then that lease is required by law to be registered on the title of the landlord's property. Consequently any person investigating the title of the landlord's property would be made aware of the existence of the lease and should that property be sold then the



purchaser would take the title subject to any registered lease. Registration of the lease provides a tenant with added security and protection of their rights under the lease.

As an example, where a lease term is for 2 years plus an option of a further 2 years because the total term of the lease would be greater than 3 years the lease is required to be registered. However, a lease for a period of 2 years with a further option of 1 year would not be required to be registered as the total term is 3 years or less.

5. What happens if the tenant is in breach of the terms of the Lease?

Generally the rights of the landlord are determined by the specific provisions of the lease in question. If the tenant is in breach of the lease, for example by failing to pay rent or other moneys due to the landlord in accordance with the terms of the lease, the landlord has a number of remedies available, including:

- Re-entering the premises to the exclusion of the tenant (ie a lockout);
- Terminating the lease.
- If, the lease specifically provides so, converting the lease into a monthly tenancy which may be terminated at the will of the landlord;

There are usually strict procedures required to be followed by a landlord when exercising any of the above options and you should contact us to obtain specific advice in regard to the correct procedure required before exercising them.

6. Is a new Lease required when a tenant exercises an Option to Renew the Lease?

Should a tenant validly exercise an option to renew a lease which has been specifically provided for in the lease document, then the landlord and tenant must enter a new lease for that additional term. This lease will generally be in identical terms to the original lease document with the exception of any permissible amendments (eg a new rent amount).

The same provisions apply to lease renewals in respect to the payment of lease preparation costs and disbursements such as registration fees and mortgagee consent fees as apply to new leases.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.