



Commercial and Retail Leasing

Some of the most commonly asked questions about Commercial and Retail Leasing are discussed on this page.

1. How important is the Lease of my Business Premises?

For almost any type of business, the location of your business is often vital to its success. When the business has a clientele closely related to its location e.g. in a shopping arcade, loss of the location may cause loss of almost the entire clientele and goodwill. The costs and the dislocation involved in moving to another location are always substantial and can be prohibitive.

If you seek to sell your business, any purchaser will want the right to take a transfer of your lease and to continue in the premises for a definite period of time.

It is therefore vital to ensure your lease is properly drawn up so that you do not have to move or change some important aspect of your operations and so that you can transfer it.

2. Does Government Regulation control what the terms of the lease will be?

If you are entering into a retail lease in New South Wales, the Retail Leases Act provides for certain basic rights and responsibilities for landlords and tenants which override the provisions of the lease if they conflict with the provisions of that Act. Otherwise, there is no government regulation that controls what the terms of the lease will be. It is up to the parties to agree on the terms and to make sure that they are accurately set out in the lease before it is signed.

3. What things should I consider in negotiating a lease?

Each lease is particular to the premises, the type of business and the parties involved. Generally the following things should be considered:

Rent

- How much rent can I afford as my starting rent and can I afford an annual increase?
- How is the rent calculated? If it is based on estimated turnover could this make me vulnerable?
- How and when will the rent increases be calculated? When will the first rent review occur and how often can it be reviewed?
- What happens if the space becomes unusable or my use is disrupted? Do I have to keep paying rent? Can I get out of the lease? Can my landlord end the lease?



Other Expenses

- Do I have to pay a security bond or deposit? If yes, how much, to whom, is it safe? Who will hold the bond? How can I get it back at the end of the lease? Could I lose it? Do I get interest?
- What other costs will I incur and am I paying my fair share? For example, waste disposal, stamp duty, legal costs, management fees, landlord's outgoings, promotion or advertising levies, electricity, gas, cleaning, insurance.
- Can I be sure about the level of any extra expenses and can they increase? What information must the landlord give me about extra expenses or outgoings? Do I have the right to review documentation related to outgoings?
- What equipment and/or services are included in the lease?
- Do I have to pay for repairs and maintenance or a share of them? Who pays for fair wear and tear? Does the landlord have to pay for structural repairs?
- Do I have to pay GST on the rent or other costs? If so, can I claim a GST credit?

Renewal

- Should I try to negotiate an option to renew? What will be the renewed period? What are the drawbacks? How would I take up my option?
- How and when will the new rent be calculated?
- How will I know when it is time to exercise my option?

Other Obligations

- What do I have to do when the lease ends - either at the end of the agreed term or because my landlord or I have ended the lease? Will I have to redecorate? To what standard?
- Are there any general rules that apply to all the tenants in the building or centre? Are they reasonable? Do they apply fairly to all? How can they be changed?
- Does the lease require personal guarantees? If I am paying a security bond as well is this reasonable?
- Does the lease require me to give power of attorney to the landlord if I default? Is this reasonable?
- If the landlord claims that I am in default, how much notice am I entitled to before the landlord can terminate the lease? Am I entitled to have a chance to rectify the default first?

Permitted Uses and Access

- Are there others with the same or similar businesses in the same centre/location? If the landlord has promised not to allow any of my competitors into the centre or building, is this set out clearly in the lease?
- Do I need any licences to operate my business?
- Are there any restrictions imposed by council zonings, other local/State legislation or the lease?
- What hours can I access the premises? Will this be a problem? Will there be any restrictions imposed by the landlord or council regulations? Can opening hours be easily changed if required?
- Is the permitted use wide enough to cover an expansion or sale of my business?



- Am I satisfied that the description of the premises accurately describes the space I will occupy, my rights to use any common areas or facilities and any car parking arrangements for me, my staff or my visitors?

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.