

Commercial Leases

A lease provides you with the legal right to occupy premises. It protects you and the landlord by setting out all the agreed terms of occupancy.

When taking out a commercial lease, you first have to decide on what premises and lease will be right for your business, then you have to clarify with the landlord in writing all issues about the lease and the premises before signing the document. This will include issues about:

- Rent.
- Outgoings.
- Other obligations.
- Permitted use and access.
- Location and building design.
- Insurance.

Do ...

- ▶ *Check with your accountant the most tax effective way to structure the payment of rent, fit-out costs and GST.*
- ▶ *Inspect the property and take notes and photographs prior to moving in.*
- ▶ *Talk to any other tenants – see how they get along with the landlord.*
- ▶ *Ask for audited statements about outgoings such as gardening, maintenance and advertising.*
- ▶ *Consider registering the lease with the Land Titles Office if it is for a term of 3 years or over, even if unspecified in the lease.*
- ▶ *File a copy of the lease in a safe place.*

Questions to ask yourself

- ▶ What location and how much space would best suit your business?
- ▶ How much rent can you afford as your starting rent and can you afford an annual increase?
- ▶ How long do you need to be there to recover your costs and make a profit?
- ▶ How long do you need the lease to be? The longer the lease, the higher the security, but the less flexibility you will have to expand or move premises.
- ▶ What zoning requirements does your business have?

Before signing a lease

You should have detailed discussion with the landlord/agent before signing, and also seek advice from business associations, your solicitor and accountant. Obtain a draft lease and check:

- What is the lease duration? If you are taking over an existing lease, how much longer does it have to run?
- Does the lease have an option to renew?
- What is the rental and how often does it have to be paid?
- If you sell the business, do you have the right to transfer the lease to the new owner?
- Does the lease contain an arbitration clause?
- Does the lease allow for the type of business you want to conduct?
- Can you sub-let all or part of the premises? If so, under what conditions?
- Who is responsible for council rates, water costs, legal fees, stamp duty, security, cleaning etc. under the lease?

Specific issues to consider

Commercial leases are normally non-standard documents prepared by solicitors acting for the landlord. Be aware that all aspects of the terms of the lease are negotiable:

Rent

- How is rent calculated? Is it including or excluding outgoings? If it is including outgoings, this is the only amount you should be required to pay on a regular basis under the lease.
- How and when will 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 your use is disrupted? Do you have to keep paying rent? Can you get out of the lease? Can your landlord end the lease?

Other outgoings

- Do you have to pay a security bond or deposit? Often 3 months rent is required.
- What equipment and/or services are included in the lease?
- Do you 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?

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In the lease ...

- ❑ Make sure that all negotiated agreements are written into the lease.
- ❑ Put all the issues that arise during the term of lease in writing. If you and the landlord agree to a variation, make sure this is agreed to in writing and, if necessary, registered with the Land Titles Office.
- ❑ The lease should clearly identify the premises and all parties to the lease, the commencement and expiry date, plus any options for extending the period of the lease term.

More Information

SOURCES OF INFORMATION

Visit the NSW Department of State and Regional Development small business website for more information on business management issues, and more general business information:

www.smallbiz.nsw.gov.au

WHO SHOULD I TALK TO?

Contact your solicitor to discuss the details of a proposed lease, or if you have a dispute with your landlord.

Your local Business Advisory Service can offer you one on one advice on taking out a commercial lease.

Call 1300 650 058

Other obligations

- ❑ What do you have to do when the lease ends - either at the end of the agreed term or because your landlord or you have ended the lease? Will you 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? Try to negotiate that there is no personal guarantee, but offer a bank guarantee instead.
- ❑ If the landlord claims that you are in default, how much notice are you entitled to before the landlord can terminate the lease? Are you 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 your competitors into the centre or building, is this set out clearly in the lease?
- ❑ Do you need any licenses to operate your business?
- ❑ Are there any restrictions imposed by Council zonings, other Local/State legislation or the lease?
- ❑ What hours can you 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 your business?
- ❑ Are you satisfied that the description of the premises accurately describes the space you will occupy, your rights to use any common areas or facilities, and any car parking arrangements for you, your staff or your visitors?

Location and building design

- ❑ Does the location and space suit your business and can it be used for the intended purpose?
- ❑ Will the building need to be upgraded or renovated to enable the proposed use, or to meet legislative requirements? Who will pay for this and any ongoing maintenance?
- ❑ If fit-out is required, what will be needed and who will pay for and maintain it? Who will own the fit-out, and do you need approval to change it? Does the fit-out have to be removed at the end of the lease?

Insurance

- ❑ Will you have to take out any insurance? What type – public liability, building, glass, for your fittings? How much will it cost? Will you have to get consent from the landlord about things that might affect his/her insurance?
- ❑ Do you have to contribute to the landlord's insurance as well as paying for your own?

Dispute resolution (if talking fails)

- ❑ Get a copy of the Resolving Small Business Disputes kit available from the Department of Industry, Tourism and Resources on 1800 024 095 or www.industry.gov.au
- ❑ For retail tenancy agreements – consult the Retail Tenancy Unit of the NSW Department of State and Regional Development for assistance with mediation on 1800 063 333 or 9223 0466.