

Retail Leases

What do I need to consider when becoming a LANDLORD?

Before entering into a Lease you should consider the following:

- Make sure you are clear about the property you are leasing. Will the tenant have use of all or only part of the property?
- How much rent will your tenant be paying and how often? Will rent be plus GST?
- The amount of rent payable is usually reviewed annually. You will need to consider whether rent will be reviewed to market, fixed percentage or CPI.
- How long will the Lease last? A retail Lease must have a term of at least 5 years. You can also give your Tenant the option of further terms but remember you must renew the Lease if the tenant requests if Lease provides for options.
- It is usual to request that your Tenant provide you with their financial information and business experience. You should try and choose a Tenant that will have the means to pay rent on time and run a successful business at your property. If you have doubts, you can request that the Tenant provide a guarantor for the Lease.
- If your property has a current mortgage, you will need to obtain your mortgagee's consent to the Lease and pay the associated costs.
- Have you met your disclosure obligations? You must provide the tenant with certain information before a Lease is signed. Failure to do so can mean the Lease is not binding.

If Chinka (HEP) Steel is acting on your behalf we will work through these matters with you prior to preparing a Lease.

What do I need to consider when becoming a TENANT?

Before entering into a Lease you should consider the following:

- You need to have a clear idea of the business you wish to conduct from the premises. The Lease will restrict you to using the premises for a specified nominated purpose only.
- Make sure you are clear about the premises you will be leasing. Which parts of the property will you have exclusive use of and which will be shared with other tenants.
- How long do you want Lease for? You will need to consider the nature of your business and determine the length that will best suit your intentions. Remember to consider your future as the sale of your business will be more attractive to purchasers if a secure Lease is in place.
- You need to ensure that you advise your Landlord within the specified timeframes if you wish to renew your Lease.
- Tenant fit-out not always included in the specified costs of the Lease and it is likely that you will be responsible for the costs of all necessary fit-out suitable for your business. You should ensure that you factor in these costs prior to signing a Lease.
- The amount of rent payable will be reviewed periodically during the term of your Lease. You should make sure you are aware of the frequency of these reviews and whether the rental amount will be reviewed to market, fixed percentage or CPI
- Will you need Landlord consent before you make any changes to the premises.

We can help you through these questions and more to ensure that the Lease addresses your needs.

AM I PROTECTED?

Retail Leases Act provides certain protections for tenants and landlords that cannot be altered or removed. These protections will apply to any Lease that meets the characteristics of a retail lease, regardless of whether the Lease document is titled Retail or Commercial.

This will generally be any lease which relates to premises used wholly or predominantly for the sale or hire of goods.

MORTGAGES

When a lease premises is subject to a mortgage, it is the Landlord's responsibility to obtain the mortgagee's consent to the Lease.

This will protect the Tenant's interest in the property should the Landlord default on their mortgage. If there is a mortgagee sale, the Tenant will be forced out of the property if mortgagee consent was not obtained.

TRANSFER OF LEASE

If you sell your business or no longer wish to lease the premises, you may wish to transfer the Lease to another party.

This would transfer the Tenant's leasing obligations to a third party.

You cannot transfer a Lease without first obtaining the Landlord's consent. It is reasonable for the Landlord to request information in relation to the new Tenant including business references and financial information to satisfy themselves that the new Tenant can meet the obligations of the Lease.

The costs in relation to a transfer of Lease are borne by the existing Tenant.

SUB-LEASE

Circumstances may arise where you wish to sub-lease part or all of the premises to a third party.

Landlord's consent must be obtained before sub-leasing any part of the property.

It is reasonable for the Landlord to request information in relation to the sub-Tenant including business references and financial information.

The existing Tenant will remain liable for the obligations under the Lease when a sub-Lease is in place, even if the entire premises is sub-leased.

PAYMENTS

There are numerous financial obligations under a Lease, some of which are the responsibility of the tenant and some the landlord.

The Tenant will be responsible for:

- Rent;
- Insurance as specified in the Lease;
- Outgoings relating to the property as disclosed in the Disclosure Statement;
- Transfer or Sub-Lease preparation fees and Landlord's legal fees in relation to same.

The Landlord will be responsible for:

- Lease preparation fees;
- Costs associated with obtaining mortgagee's consent;
- Any costs that relate to capital works to the premises (other than those specified in the Lease);
- Land Tax.



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