

# Leasing Premises For A Business

A hassle-free lease contains all relevant terms and conditions and clearly identifies all rights and responsibilities. Leases for business premises are usually prepared by the owner's solicitor. So, if you intend to lease premises for a business it is important that you and your solicitor carefully check and agree on the details before you sign.

## Initial Negotiations

When you believe you have found the right premises for your business the letting agent will often hand you a letter of offer or intention, for you to sign.

Do not sign or pay any deposit unless the offer clearly states that it is subject to your solicitor's approval of the lease with a full refund of the deposit if the lease does not go ahead.

## The Lease

When you have received the lease prepared by the owner's solicitor, it should clearly set out the terms and contain the rights and responsibilities of the owner (lessor) and yourself (lessee). For your protection and to minimise litigation and disputes, have your solicitor thoroughly check the detail before you sign.

## Retail Shop Leases Act 1994

If you intend to lease a retail shop it is vital that you are fully aware of the provisions of this Act.

It deals specifically with the requirement of a disclosure statement from the owner to you and other issues including:

- § Rent review
- § Turnover rent and figures
- § Promotional levies

## Terms of Lease

The terms of a lease are negotiable so it is important that you have your solicitor inspect the lease to be sure the terms are fair.



Consider the following:

- § The initial rent and the method of increasing the rent should reflect the offer.
- § Your ability to transfer or assign the lease if you decide to sell, and the expense of doing so
- § The possibility of subletting the premises.
- § Whether local town planning laws allow your business to operate.
- § Your rights to end the lease if the premises are damaged or destroyed.
- § Duration of the lease and right to renew it.
- § Who pays for:
  - Keeping the premises in good repair;
  - Rates and taxes;
  - Outgoings and other charges;
  - All the additions, improvements, and fixtures made during the lease.
- § The types of insurance required and who contains it.
- § Restrictions on the removal of fixtures and fittings.
- § Your obligation to remove partitions and reinstate the premises after expiry.
- § The consequences of failing to pay rent.
- § Your right to end the lease before it expires.
- § Ways of resolving any disputes.
- § Whether the Retail Shop Leases Act 1994 applies to your lease and what that means.
- § Special obligations under a shopping centre lease.
- § Payment of a security deposit and the terms of a personal guarantee.

### **Securing your Interests**

Apart from negotiating the best possible terms, your solicitor will:

- § Ensure the lease reflects the commercial terms agreed to.
- § Establish whether a mortgagee's consent to the lease is needed.
- § Ensure there is clear title.
- § Advise you on the operation of the Retail Shop Leases Act 1994.
- § Advise you on your responsibilities under the body corporate rules, if the premise is strata titled.
- § Advise you of the effect of easements or other competing interests.
- § Advise you on your obligations under the lease.

### **Approved Lease**

When drafted, the lease is sent to the tenant's solicitor for their approval or amendment. Once the terms are finalised, the tenant and the landlord will sign the lease. The landlord's solicitor will arrange for the lease to be stamped and, if necessary, registered on the State's Land Register.

If the term of your lease is more than three years, it must be registered to protect your rights. Registration prevents the landlord from terminating the lease unexpectedly.

### **As an ongoing tenant**

Be sure to:

- § Comply with the conditions of the lease.
- § Give notice in time to renew the lease.
- § Understand your rights if you stay on without renewing the lease.
- § Obtain the landlord's consent if you wish to change the type of business you run.
- § Understand the landlord's right to end the lease.

### **Government Fees**

Be aware that you must pay standard State and Local Government charges. They include lease registration fees, mortgage consent fees, and sketch plan examination fees.

### **Legal Costs**

At your initial appointment, ask your solicitor about the costs involved in setting your lease.

Legal costs for preparing a retail shop lease are paid by the landlord. In all other cases they are paid by the tenant.