

LEASING COMMERCIAL AND RETAIL PROPERTY

Most businesses operate from leased premises the leases generally classified as either commercial or retail. Unfortunately not all business owners enter into a lease with a full understanding of all the rights, and more importantly obligations, covered in their lease. If you are considering either leasing business premises or renewing an existing lease, you should have the lease document checked by an expert and explained to you in plain English before you sign anything.

WHAT IS A LEASE?

A Lease is a contract between the owner of the land (Landlord or Lessor) and the occupier of the land (Tenant or Lessee), which identifies the premises, the parties and their respective rights and obligations.

NEGOTIATING A LEASE

The terms of a Lease are negotiable which means all the conditions under which you occupy the premises must be contained in the Lease. Professional advice and asking the right questions is important. This includes:

- When does the Lease start and what period does it cover?
- What options to extend the term of the lease are available? Is it renewable?
- What is the rent, and how and when does it increase?
- Are there additional charges for outgoings?
- Is a bond required and does that amount change throughout the term?
- Who pays the legal costs for establishing the lease and other additional charges?
- Is GST payable under the lease and does it comply with the GST laws?
- Who owns the fixtures and fittings of the premises and what will happen to them at the end of the lease?
- Are the insurance requirements satisfactory and realistic?
- What indemnities apply and how does that affect you?
- What obligations apply to redecorate the premises during the term?

TYPES OF LEASES

Retail Shop Lease

These leases are regulated under the Retail Shop Lease Act 1994, which aims to promote efficiency and equality in the conduct of certain retail businesses in Queensland. Retail shop leases have mandatory minimum standards and low cost dispute resolution processes for disputes.

Commercial Lease

Other business leases are considered a commercial lease. These leases are not governed by the Retail Shop Leases Act. However the operation of the lease is still governed by government legislation. It is up to the parties to negotiate a fair and reasonable lease. When negotiating it is important to remember that both the landlord and the tenant are business people who expect a fair return on their investment.

Commercial Tenancy Agreement

A Commercial Tenancy Agreement is a valid and binding agreement whereby the tenant agrees to occupy the landlord's premises. The Real Estate Institute of Queensland provides a template whereby the particulars of the agreement as negotiated are inserted by the parties. This document must not be used for residential leases, retail shop leases, or where the initial term exceeds three years or where the lease is required to be registered with the Department of Natural Resources and Mines.

Residential Leases

These Leases are governed by the Residential Tenancies Authority (RTA). There are many mandatory terms and conditions for a residential lease, knowledge of which is essential for both the landlord and the tenant.

COSTS OF A RETAIL SHOP, COMMERCIAL LEASE OR COMMERCIAL TENANCY AGREEMENT

Besides rent and outgoings there are other costs that will or may become due and owing. Some of these include:

- Registration fees of the Lease with the Department of Natural Resources and Mines
- Fees for the surveying of the premises
- Mortgagee Consent to lease from the Landlord's financier
- Legal costs for preparing the lease
- Legal costs if there is a default under the lease

Depending on the negotiation process and the type of Lease entered into either the landlord or tenant must pay for these costs. It is important to obtain professional advice to protect your rights and ensure there are no hidden costs.

ENTERING INTO A LEASE?

Whether you are the landlord or the tenant it is imperative you obtain expert legal advice before entering into a Lease. Once entered into, a lease may only be amended with the consent of both parties. Leasing premises is a significant commercial commitment. To ensure you are able to meet all the obligations of your lease you should read it carefully and ask us to clarify any points you may not understand.

At Ferguson Cannon Lawyers we can provide you with expert advice on all aspects of leasing. We can also prepare a lease to suit your needs and comply with the relevant legislation. We will provide advice in plain English with your interests being our paramount concern.

For all of your leasing enquiries, please contact Tony Pattinson.