

### **INTRODUCTION**

The Retail Shop Leases Act places strict time requirements on parties who are or have entered into a retail shop lease.

### **BACKGROUND**

The Act applies to all retail shop leases of premises in Queensland. The term "Retail Shop Lease" is defined as meaning a lease of a retail shop. The term "Retail Shop" is defined as meaning premises that are:

- (a) Situated in a retail shopping centre; or
- (b) Used wholly or predominately for the carrying on of one or more retail businesses.

### **NEW LEASE**

The Act requires a Lessor to provide a disclosure statement and a copy of the draft lease to a prospective Lessee of a retail shop at least seven (7) days before the lease is entered into. The term "enters into a lease" mean the earlier of:

- (a) The date a lease becomes binding on the Lessor and Lessee; and
- (b) The date the Lessee enters into possession of the Lease of the Shop.

If a Lessor fails to provide this disclosure the Lessee may terminate the lease within six (6) months after the Lessee enters into the lease. Further the Lessor may be liable to pay damages to the Lessee.

The Act also requires the proposed Lessee to provide a Lessee disclosure statement, financial advice certificate and legal advice certificate. These forms are generally required to ensure proposed Lessee has received appropriate professional advice.

### **ASSIGNMENT OF LEASE**

Similar disclosure obligations are imposed on the Lessor upon the assignment of a lease. Upon an assignment:

- (a) The Lessee (Assignor) must give to the Assignee a disclosure statement at least seven (7) days before asking the Lessor to consent to the assignment.;
- (b) The Assignee must give a disclosure statement to the Lessee (Assignor) before the Lessors consent is sought;
- (c) The Lessor must give a disclosure statement and a copy of the lease to the Assignee at least seven (7) days before the assignment is entered into; and

- (d) The Assignee must give a disclosure statement to the Lessor before the assignment is entered into

Unlike when a new lease is entered into there are no rights for a prospective Assignee to terminate the lease if the Lessor fails to provide the disclosure statement.

When the Lessee has given the Lessor full particulars of the proposed assignment and asks the Lessor in writing to consent to it, the Lessor must give a response within one (1) month. Failure to do so results in a retail tenancy dispute. A dispute will also exist if:

- (a) The Lessor seeks to impose on the prospective Assignee an obligation that is not the Lessee's obligation under the lease;
- (b) The Lessor purports to withdraw from the prospective Assignee a right conferred on the Lessee under the lease; or
- (c) The Lessor seeks to impose, as a condition for consenting to the assignment, a condition that the Lessee considers unreasonable.

## **OPTIONS**

The Act requires a Lessor to remind the lessee of the option to renew despite anything else in the lease which may be to the contrary.

The notice which the Lessor must give is at least 2 months but not longer than 6 months before the option date. The option date is not the date the current term expires but rather is the date stated in the Lease as the date by which the Lessee must exercise the option to renew the Lease if they intend to do so. As an example if the Lease requires the Lessee to give notice at least 3 months before the expiry of the Lease then the option date is at least 2 months and not more than 6 months before that date, that is in affect at least 5 months but not more than 9 months before expiration of the term.

If a Lessor fails to give notice there is a maximum penalty of 40 penalty units which equates to \$3,000.00.

## **EXPIRATION OF LEASE**

If the Lease does not contain any option the Lessor must give written notice that:

- A renewal or extension of the lease will be offered on terms, including terms about rent, stated in the notice; or

- There is no intention to offer the lessee a renewal or extension of the lease.

The notice period is as follows:

- of less than one year is at least three months but not longer than six months before the lease ends; and
- for a lease of more than one year is at least six months but not longer than one year before the lease is to end.

There is no penalty to the Lessor if it fails to give notice. However, if no notice is given, the term of the lease is automatically extended until:

- six months after notice is given; or
- a date where the lessee terminates the lease which is at least one month after written notice of the termination is given from the lessee to the Lessor.

### **CONCLUSION**

The above are a brief summary of the more common timeframes and requirements under the Retail Shop Leases Act. The Act contains many other requirements and obligations on the parties who are contemplating or who have entered into a Retail Shop Lease.

If you have any queries in relation to Retail Shop Leases please contact Tony Pattinson from our office.