

FAST FACTS 11: LEASING BUSINESS PREMISES

It is very important, before you sign any lease or lease renewal option, that you understand exactly what you are signing. Consult a solicitor if you do not understand what you are signing and be fully aware of the commitment you are undertaking.

You should know the answers to the following questions **before** you sign:

- Who will be responsible for maintenance of the structure, fixtures, fittings, equipment and chattels?
- Do you require permits or licences to operate the business? For example a take-away eatery requires a health licence issued by the Northern Territory Department of Health and Community Services.
- Is the business premise zoned for the type of business that you wish to undertake?
- Who is responsible for legal costs, stamp duty, etc?
- Are you able to sub-let all or part of the premises? If so, under what conditions?
- How is the rent calculated? (annual, monthly, weekly)
- How will the Tax Reform package affect your rent? What provisions are in the contract to change the rent when the Tax Reform package comes into effect?
- What types of insurance do you require under the conditions of the lease? Who is responsible for these insurances?
- What is the duration of the lease (eg, if you are taking over an existing lease, how much longer will it run for?)
- Is there an option to renew the lease? Do you need to give prior notice of intention to take up the next option? Must this be in writing and how long will it be required before expiration of the lease?
- On what basis can the rental be varied and how often (eg, is it based on the Consumer Price Index, gross profit, based on turnover or flat percentage increase, or is it by agreement between the parties?)
- Who owns the premises? A title search should be carried out which will show any mortgages. If the landlord has a mortgage, has the mortgagee consented to the lease? If not, the mortgagee will not be bound by the lease and may be able to evict you.
- Does the lease allow for the type of business to be conducted? Are there any limitations that might hinder diversification?
- Who is responsible for the outgoings? These can include rates, sewerage, water, power, maintenance and repairs. You should be aware of additional outgoings clauses included in commercial lease contracts which may entitle the lessor to contributions from a number of lessees, including common expenses of a building or development. These may include cleaning, security, gardening and promotional levies.

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- Is there a right of assignment clause (ie, is the lease transferable in the event of the sale of the business and, if so, under what conditions?)
- Is there an arbitration clause in place to settle disputes over rent increases?
- When the term of a lease has expired, and there are no further options, there is no right to remain in possession or to expect a new lease. If you want to stay on or want a new lease, begin negotiations early.
- Once you have signed a lease you are committed to pay rent and fulfil other obligations in accordance with the lease agreement. This is a substantial commitment and should be undertaken only after the most careful consideration.
- You should also familiarise yourself with the provisions of the *Real Property Act* and your obligations under the Act.

Be careful of leases with low commencement rents to attract a prospective tenant. There may be substantial increase at the first annual review.

For more information refer to other Fast Facts in this series or contact:

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