

Commercial Leases

At Delaney & Delaney, we have extensive experience in acting for both Landlords and Tenants in Commercial Leasing matters.

A Commercial Lease is an agreement to lease commercial property. This may include shops, warehouses, offices and surgery space. In Queensland, Commercial Leases are governed by the Property Law Act 1974. The Retail Shop Leases Act 1994 imposes additional legal requirements on the Leases of certain commercial premises which come within the definition of "Retail Shop" under the Retail Shop Leases Act.

It is very important to determine whether or not the Retail Shop Leases Act applies to a Lease before it is signed. If a Retail Shop Lease is entered into and the Landlord does not comply with the Retail Shop Leases Act, the Tenant may be able to terminate the Lease. A Landlord may also need to pay compensation if it breaches the Retail Shop Leases Act.

Retail Shop Leases

A Retail Shop Lease is defined in the *Retail Shop Leases Act* as premises that are situated in a Retail Shopping Centre or are used wholly or predominantly for the carrying on of a Retail Business. The defining characteristics of a "Retail Shopping Centre" and "Retail Business" are listed in the *Retail Shop Leases Act* and *Retail Shop Leases Regulation*. The requirements of the *Retail Shop Leases Act* may apply even if a business is not a Retail Business (eg an office or a surgery), but it is in a Retail Shopping Centre.

If the *Retail Shop Leases Act* applies, the Landlord must give a Lessor Disclosure Statement and a draft Lease to a prospective Tenant at least 7 days before entering into a Lease. If the Landlord fails to give a Lessor Disclosure Statement or if the Lessor Disclosure Statement is defective, the Tenant may terminate the Lease within 6 months after it enters into the Lease. The Landlord must also pay the Tenant's reasonable compensation for loss or damage caused by its failure to give a valid Lessor Disclosure Statement.

Where the *Retail Shop Leases Act* applies, the Tenant must give the Landlord a Lessee Disclosure Statement, a Financial Advice Report and a Legal Advice Report, signed by the Tenant and their accountant and solicitor respectively, before entering into the Lease.

Unlike standard commercial Leases, the Landlord is not permitted to charge the Tenant for the Landlord's legal costs of entering into the Lease (apart from specified outgoings).

Agreements to Lease

Commonly, a prospective Landlord and Tenant will sign a document called an "Agreement to Lease" prior to entering into a formal written Lease. An Agreement to Lease may be binding if it is in writing and it sets out all of the essential terms of the Lease, including identifying the property to be leased, the Landlord and Tenant, the price, the term, details of any options to renew the Lease, and identifies which party will be responsible for the payment of outgoings. If the terms in an Agreement to Lease are sufficiently certain, the Agreement to Lease may be a legally binding document. It is therefore extremely important to take great care to ensure that an Agreement to Lease reflects your intended Lease terms before you sign it, as it may not be possible to negotiate variations to these terms once you are already bound by the Lease. We recommend that you obtain legal advice before you sign an Agreement to Lease to ensure that your rights are best protected.

Do I need to register my Lease?

Under the *Property Law Act*, a lease for a term of 3 years or less has indefeasibility of title. This means that the Lease is binding on all third parties, whether or not it is registered on the title to the property: for example, if there is an unregistered 2-year Lease of commercial premises and the Landlord sells the premises, the Buyer would buy the land subject to the existing Lease.

If a Lease is for more than 3 years, it must be registered with the Titles Office in order for the Tenant to enjoy indefeasibility of title: that is, for the lease to be binding on a new owner of the premises. For example, if there is an unregistered 4-year Lease of commercial premises and the Landlord sells the premises, the Buyer of the premises may not be bound by the terms of the Lease.

Do I need to register my Lease?(cont)

Likewise, if the Landlord defaults under a mortgage over the leased premises and the mortgagee takes possession of the premises, the mortgagee's interest in the premises will be subject to the terms of the Lease if the Lease is registered on the title. If the Lease is for more than 3 years and it is not registered on the title, the mortgagee may not be bound by the Lease.

It is therefore extremely important to register a Lease which is for a term of 3 years or longer in order to protect the Lease from other interests in the premises.

Important issues that a Commercial Lease can address

Following is a brief list of some other issues that a commercial lease should cover:

- ✓ What are the Tenant's redecoration obligations during and after the Lease term?
- ✓ Who will install the fit out in the premises?
- ✓ Who owns the fit out?
- ✓ What security is required for the Tenant's performance of the Lease? Is the security to be in the form of cash or a bank guarantee?
- ✓ Does the tenant have any options to extend the Lease? How are the options to be exercised?
- ✓ What are the events of default under the Lease?
- ✓ What are the possible consequences of default?
- ✓ Who is responsible for payment of the outgoings of the premises? How are outgoings to be calculated?
- ✓ Does the Tenant need to pay turnover rent or marketing levies to the Landlord? If so, how are these to be calculated?
- ✓ Any other special conditions required to reflect the agreement between the Landlord and the Tenant.

Please contact a member of our [commercial leasing team](#) to find out how we can help you with your commercial leasing needs.

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