

Key Terms TO INCLUDE IN YOUR LEASE (IF YOU ARE THE LANDLORD)

If you are looking to lease out your property, you should put in place a current and legally compliant lease with the tenant. The lease will govern the relationship between you and the tenant, and given that leases can go for years, it is important that you cover off all of the key terms upfront. In doing so, you will reduce the risk of uncertainty and disputes in the future. This article sets out a checklist that identifies the key terms which we recommend you include in the lease, based on issues that we often see arising during the course of a lease.

KEY ITEM	WHAT TO CONSIDER	CHECK
FIT OUT	If the tenant is going to fit out the premises, then the fit out should be subject to your approval, should be undertaken by contractors that you approve and the tenant should also be obliged to obtain any Council or other approval required. The lease should also specify whether the tenant is required to remove their fit out upon the termination of the lease (or whether it becomes your property).	
SECURITY	Do you require the tenant to provide you with security for the tenant's obligations? This may include a bank guarantee, security deposit (bond) and/or a directors guarantee. The more security you take, the better protected you will be in the event the tenant defaults. If the tenant has a limited renting history, you should use this as a basis for negotiating a higher level of security. The security can always be reduced down the track if the tenant does not default.	
PREMISES	You should ensure that the premises are well defined and specify whether they include the whole or part of the land/building. We recommend including a zone map of the land/building. The area of the premises is frequently disputed. You should also specify any shared or common areas.	
TERM AND OPTIONS	What length is the initial term of the lease? You should specify the commencement date and expiry date of the lease. If there are to be options, then you must also list the time for exercise of option and the notice requirements (for example, you may want the tenant to give you at least six months notice as to whether they intend to exercise their option for an extension to the term).	
RENT AND RENT REVIEWS	You should specify the rent and the instructions for payment of that rent. Leases commonly specify payment of rent monthly in advance on the first day of each month. You should also consider what types of rent reviews you wish to include and the dates and calculation methods of those reviews.	
OUTGOINGS	You will need to specify the outgoings payable by the tenant. For outgoings that are not specific to the tenant, you should include the method of calculation (such as the percentage of the premises proportionately to the rest of the building).	
INSURANCE	Consider the insurances that you will require the tenant to hold. As a minimum, tenants are generally required to hold public liability insurance, plate glass insurance and worker's insurance. The tenant should be required to have your interest noted under public liability insurance, so that you can directly claim on the policy if required.	
USE OF PREMISES	You will need to define the tenant's permitted use of the premises and whether the tenant is entitled to exclusive use of this permitted use in the building. Consider whether you need to restrict the tenant from undertaking certain activities that may be in competition with other tenants in the building.	
REPAIRS AND MAINTENANCE	Who will be responsible for the repairs and maintenance? Usually as the landlord, you would be required to undertake any repairs of a capital nature (unless the need for repair arose as a result of the tenant's actions), and the tenant is responsible for any day to day repairs. You should clarify who is responsible for repairs and maintenance of any heating and air-conditioning equipment and how often they are to be serviced.	
DEFAULT AND TERMINATION	You should specify in what circumstances the tenant will be in default under the lease and when you are entitled to terminate the lease.	
MAKE GOOD OBLIGATIONS	Generally tenants are required to paint the premises upon termination of the lease. You should consider whether the tenant also needs to remove their fit out, and any other special "make good" obligations that should apply.	
RELOCATION & REDEVELOPMENT	If there is the potential for you to require the tenant to move premises, such as if you intend to redevelop the building in future, then a relocation/redevelopment clause should be included giving you the right to do this.	
WARRANTIES	You should include a clause which confirms you do not warrant that the premises are suitable for any particular use (including the permitted use) and the tenant is solely responsible for obtaining any permits or consents required to operate the premises. It is also useful to include a warranty by the tenant that they have not relied on any representations or warranties made by you in entering into the lease.	

RETAIL LEASE OBLIGATIONS

In most circumstances, your lease will be governed by the Retail Leases Act 2003 (Vic) (the Act). If this is the case, the Act imposes certain responsibilities and limitations on you as the landlord and the lease generally, as well as imposing disclosure obligations. Failure to comply with the Act can have adverse consequences and be very costly. Should you have any queries or require assistance in drafting or reviewing your lease, please get in touch with our property and leasing team today.