

Leasing: TIPS AND TRAPS FOR TENANTS

When entering into a lease, there are a number of key things to look out for. In this guide we set out useful tips for tenants, as well as common traps that we encounter when we review leases.

PERMITTED USE

You should consider whether the permitted use of the premises not only allows you to use the premises for your current intended use, but, is also broad enough to enable you to grow and diversify your business. It should also contain what is necessary for you to be able to assign the lease in the future (if it is possible that you may sell your business).

The landlord will not generally warrant that your intended use is permitted by Council. It is your responsibility to ensure that your permitted use is legally compliant with zoning and any other requirements.

The planning overlays should be thoroughly checked as part of your due diligence. It may be necessary to obtain a permit for your use, in which case the terms of the lease should be subject to obtaining any such permit.

RENT AND REVIEWS

You should carefully consider if the rental amount is appropriate and take note of the payment terms. Don't forget to take into consideration any increases in rent through reviews.

A lease can be subject to annual CPI increase or fixed percentage increases or market review.

It is common in leases to include a rent-free period in the lease, particularly during a fit-out period. This is something that you may wish to negotiate.

If your lease contains a market review upon exercise of an option, you may want to ensure that the market review can be undertaken prior to you deciding whether to exercise the option or not to ensure the rent remains affordable.

TERM AND OPTIONS

You should ensure that the term of the lease is optimal for the requirements of your business. If you are a start-up with large financial risk, you may want to consider a short-term lease with short options. If your business is well established, then a longer lease with plenty of options may be preferable.

When your lease expires, the landlord is under no obligation to renew it and you may need to find an alternative location. There are considerable costs involved in having to relocate, including the risk of losing your current walk-in customer base and any accumulated goodwill that is attached to that location. If you have options, ensure that you diarise any dates by which you need to exercise an option.

OUTGOINGS

The outgoings in the lease should list exactly what you are paying for and how they are calculated. It is common for tenants to pay for council and water rates in addition to many others.

Make sure that you satisfy yourself as to your total occupancy cost per annum, which includes not just the rent, but the outgoings also.

FIT-OUT

If you need to make changes to the property (such as undertaking a fit out), you should ensure that the lease includes this right, and the process to do so.

When undertaking a tenant fit out, you may be required to return the premises to its original condition at the end of the tenancy. There may be significant costs involved with this. You should negotiate this out of the lease if you would prefer to leave your fit out at the expiry of the lease.

TENANCY MIX

If your lease is part of a building which is shared with other tenants, you should carefully consider the mix of tenants in the building. If the building has a high level of competition this may impact your business.

You will want to be with tenants that complement your business. If the landlord owns the entire building, consider requesting an exclusivity clause, under which the landlord is not permitted to lease out any other premises in the building to tenants who operate in your industry.

REPAIR AND MAINTENANCE

Responsibility for the repairs and maintenance should be clearly defined in the lease. This should include any landlord installations.

If there are significant improvements and/or installations contained in the property, then you may wish to include reference to a condition report that has been independently prepared before entering the lease. This report can be used as a point of reference to the condition of the premises as at the start of the lease and can help to avoid disputes.

SECURITY

You may be required to provide security (bond) under the lease, such as a bank guarantee, security deposit and/or directors personal guarantee. You should ensure that the lease clearly specifies when you get your security back (in the case of a bank guarantee/deposit).

Variations to a bank guarantee can be expensive. We recommend that you fix a dollar amount for the bank guarantee to avoid having to increase it when the rent goes up, this being caused by the security deposit being referenced to a number of months' rent.

KEY TAKEAWAY MESSAGE

The above are only a select few key considerations to look out for when entering into a lease. If you need assistance with reviewing your lease, please get in touch with a member of our team today.