

Leasing Commercial Property

a short practical guide

Small Business Development Corporation

A lease for your business premises is vital and is usually central to the goodwill, value and future sale of the business. It is a legally binding contract.

While leases may be complex and difficult to understand, it is essential that you understand the terms and conditions before signing or making a commitment.

A lease may be presented as a standard lease but this does not mean that the terms and conditions cannot be changed by negotiation to suit both tenant and landlord. Leases should be tailored to suit the circumstances.

Leasing generally involves the following stages:

- inspection and research of premises;
- obtaining preliminary documentation;
- obtaining of advice;
- negotiating the lease;
- preparation of final documentation; and
- fit-out of the premises.

Each of these activities can take considerable time. Adequate time should be allocated to allow each to be dealt with properly.

All documents relating to the lease should be obtained and read, including any assignment documents.

Always retain a copy of any documents bearing your signature.

Important issues

- tenants should ensure that all representations and details given or made by the landlord or the landlord's agent are in writing; and
- inquiries and research should be undertaken in relation to the business, the lease and the property (including comparisons) **before** making any commitments to buy, lease, take on an assignment or otherwise incur any other obligations.

It is strongly recommended that you obtain legal and commercial advice before:

- signing an offer to lease or any other lease related document;
- payment of any deposit or other monies; or
- occupying the leased premises.

If the conditions of the proposed lease are not acceptable and cannot be negotiated satisfactorily, be prepared to walk away.

Commercial Tenancy (Retail Shops) Agreements Act 1985

In addition to the terms of the lease, many commercial tenancies in Western Australia are regulated by the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the Act). An understanding of this Act is essential.

Under the Act, when a new lease is being considered, a landlord is required to give to the tenant:

- a disclosure statement;
- a proposed lease;
- a Tenant Guide (attached to the lease); and
- an operating expenses budget.

These should be received prior to any commitment to the lease.

If you are considering the assignment of a lease, obtain from the current tenant a copy of these documents, which he or she should have received from the landlord.

Commercial Tenancy Forms and Act

The Act and the Regulations under the Act can be obtained from the State Law Publisher, 10 William Street, Perth (Tel: (08) 9426 0000; website www.slp.wa.gov.au).

Information and the following forms specified by the Regulations are available from website www.commerce.wa.gov.au, under forms, consumer protection forms and retail:

- Disclosure statement – Form 1
- Notice of election – Form 2
- Notice of exercise of option – Form 3
- Tenant guide – Form 6

Disputes and State Administrative Tribunal

The State Administrative Tribunal (SAT) in Western Australia deals with a broad range of administrative, commercial and personal matters which include commercial and civil disputes.

If a lease is subject to the Act, any dispute arising between the tenant and the landlord may be referred to the State Administrative Tribunal. The lodgement fee for an application to the State Administrative Tribunal is currently \$66.

For further information contact:

State Administrative Tribunal
Ground Floor
12 St Georges Terrace
PERTH WA 6000
Tel: (08) 9219 3111

Further information is also available on the SAT website at www.sat.justice.wa.gov.au

Commercial tenancy service

The Small Business Development Corporation (SBDC) has commercial tenancy specialist advisors to assist landlords and tenants with commercial lease problems and queries.

Publications

Publications available from the SBDC Business Information Centre at Level 2, 140 William Street Perth, or online at www.smallbusiness.wa.gov.au, include the following titles:

<i>Common questions about the Commercial Tenancy Act for leases entered into on or after 1 July 1999: advice for landlords and tenants</i>	
PLU 420.....	\$5.50
<i>Common questions about the Commercial Tenancy Act for leases entered into before 1 July 1999: advice for landlords and tenants</i>	
PLU 418.....	\$5.50
<i>Leasing business premises: a commercial and practical guide</i>	
PLU 417.....	\$9.90
<i>How to negotiate your way to a better retail lease</i>	
PLU 419.....	\$6.50

For further information and guidance contact:

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This publication is also available upon request in alternative formats such as large print, electronic format, audio, or braille.

Disclaimer

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