




## Retail Shop Leases – Lessee Information

### Appendix to Schedule 2

#### Retail Shop Leases

When entering into a retail shop lease the following documents are required by law:

-  The lease + NSW Retail Tenant's Guide
-  Lessor's Disclosure Statement + this appendix
-  Lessee's Disclosure Statement

#### Before signing a lease

Before signing a retail shop lease you should:

- have detailed discussions with the lessor/agent
- seek advice from business associations, your solicitor and accountant
- consult your local council about any regulations, permitted use of the shop or development applications affecting the shop.

Information on these topics is included in the NSW Retail Tenancy Guide.

#### Check your documents

Ensure that all agreements arrived at with the landlord are included in the lease. Documentation is critical to avoiding and managing disputes about the lease.

#### Your rent

You must be clear about:

- what the starting rent is, and the basis on which it is calculated
- how the rent will increase during the lease
- if you have agreed to pay turnover rent based on turnover figures, you need to be clear as to how you will give your turnover information to the lessor
- if there is an option as part of the lease, find the clauses of the lease that tell you how and when you must exercise the option and explain the way the rent will be set.

#### Lease establishment

When establishing the lease you must check:

- that you have read the lease and asked for advice on what it means
- that the description of the premises in the lease is accurate and covers any rights you will have to use common areas or car parking for you, your staff or visitors
- whether statements you have relied on in agreeing to the lease have been documented in the Lessee's Disclosure Statement to avoid disagreements later
- whether you need to provide a security deposit (bond) or personal guarantee to secure the lease, and how much this will be. If a cash security bond is agreed to, be sure it is lodged with the NSW Government's Retail Bond Scheme
- what expenses you will have to meet to fit out the shop ready for trading, and whether you will have to meet any of the costs incurred by the landlord in preparing the shop for you to occupy it.

#### The premises

In relation to the premises, you will need to be sure that:

- the location and building suit the proposed use you will make of the leased premises and to check whether you will have to renovate to enable the shop to operate
- the permitted use of the shop is broad enough for you to conduct a profitable business

- the hours you can access the shop and open it to trade, as allowed by the landlord and the council, will be sufficient to allow you to trade profitably
- you have, or can readily obtain, all the permits and licences required to operate the type of business you have chosen, and that the council's zoning for the premises does not restrict you from operating this type of business
- that you have a condition report or photos to document the state of the premises when taking possession to prevent or address disputes at the end of the lease. Agreements about equipment should also be documented. A condition report template can be downloaded from [www.retail.nsw.gov.au](http://www.retail.nsw.gov.au).

### Outgoings and expenses

In relation to outgoings and expenses, you need to understand:

- the extra expenses you will have to meet as outgoings
- how the extra expenses may change over the term of the lease, as set out in the Lessor's Disclosure Statement
- the information that the lessor will provide and your rights to receive estimates to allow you to plan for these expenses
- the insurance costs you will have to meet, including any contribution to the lessor's insurance.

### When you want to sell the business

If you want to sell your business, you need to be aware of the process set out in the Retail Leases Act for assigning (transferring) the lease. The lessee becomes the assignor of the lease, and the potential new tenant becomes the assignee. In brief, these are the steps you need to take:

- get an updated copy of the Lessor's Disclosure Statement. If an updated disclosure statement has not been issued during the term of your lease, request one in writing from the lessor. If it is not provided within 14 days, provide the latest version of the disclosure statement you have (or if none exists, this requirement does not apply to you)
- give a copy of the Assignor's Disclosure statement to the assignee (and to the lessor at least 7 clear days before the assignment if you want to be protected from ongoing liability under the lease)
- gather from the assignee the following information to provide to the lessor:
  - the assignee's name and contact details
  - documentation to indicate the assignee's financial standing
  - business experience of assignee
  - written record of statements (things said) by the assignor or the lessor which influenced the assignee to enter the assignment
- provide information listed in the dot points above to the lessor in writing, by:
  - delivering personally to the lessor or the lessor's agent,
  - leaving it at, or posting it to, the last known residential or business address – in or out of New South Wales – of the person to be served, or by
  - delivering as set out in Section 81A of the Act
- the Lessor must respond to the request for assignment of the lease within 28 days from the time all the required information is received, or the assignment is deemed to have taken place.
- there are five reasons the lessor can refuse a request for assignment of a lease:
  - if the use of the premises is to change
  - if the assignee (new tenant) has less retailing skills than the proposed assignor (current tenant)
  - if the assignee has inferior financial resources than the proposed assignor
  - if you have not complied with the procedure for obtaining consent to the assignment as set out in Section 41 of the Act
  - if the shop is airside at Sydney (Kingsford-Smith) Airport and the landlord has the right to refuse assignment under Section 80E of the Act.

### General

Further to those things listed above, you should also:

- check with your accountant the most tax effective way to structure the payment of rent, fitout costs and GST
- make sure that all negotiated agreements are written into the lease.