



Tips when entering a commercial lease

If you don't understand what you are agreeing to when entering a commercial lease, including a retail shop lease, you could experience serious financial and legal problems. These tips are informed by common disputes seen by the QSBC.

Key questions

Before entering a lease, tenants and lessors should consider these questions:

- Have I read the lease and understood it?
- Who will hold the [commercial lease bond](#)? How will it be transferred if the property agent changes, or the lessor sells?
- Is a personal guarantee required? What is the potential exposure of the guarantor?
- Is the tenant required to [make good](#) the premises at the end of the lease? If so, is there a condition report (including photos) signed by both the lessor and the tenant?
- Are all the existing structures, fixtures and plant and equipment in good working order? Who must [repair or maintain](#) them?
- Does the tenant understand what [outgoings](#) are payable in addition to rent?
- What will happen if the tenant [can't pay the rent](#)? Could they be [locked out](#)?
- Is it clear how the [rent will be adjusted](#) during the term of the lease?
- Could the tenant's trading be affected by [construction works or disturbances](#)?

Find more questions to consider [here](#).

Ending a lease early

It is rarely as simple as handing back the keys. If a tenant breaks the lease by [ending it early](#) (i.e., walking away), they may be liable for paying the rent owed from the day the lease ended until the end of the agreed term of the lease.

Fast facts

- Leases are legally binding. It is important to seek legal advice before you sign the lease, take possession, or start paying rent.
- A retail shop lease can be deemed to have been entered into if the tenant pays rent or takes possession of the premises, even if the lease has not been signed by the parties (section 11 RSL Act).

Outgoings

Outgoings are operating costs related to the premises that a commercial lessor reasonably incurs and passes on to their tenants, as part of or in addition to rent. Tenants need to be clear on [outgoings](#) before entering the lease to understand the full leasing costs.

Diarise key dates

If a tenant fails to adhere to strict timelines in the lease, they can lose rights such as the option to renew the lease or the right to lessor repairs for break downs. Set reminders for:

- renewal and option periods - give yourself time to compare the market.
- scheduled maintenance (e.g. for air conditioners and grease traps).
- when outgoing are due (usually quarterly.)
- the annual outgoing audited statement due date (usually September 30).
- the lease expiry date.

Local planning laws

Every council or local government area has different [planning laws](#). You can contact your local council, using the [local government directory](#), to discuss town planning laws and zoning requirements. A tenant is usually responsible for having council approval for any relevant activities before they begin operating.

Registering a lease

In Queensland, short-term leases (with a total duration of three years or less, including any options) are protected (s185 (b) *Land Title Act 1994*).

A lease with a total period of over 3 years (including options) can be registered with [Titles Queensland](#) to officially note your interest in the land on the title in the event the lessor sells the property or otherwise loses possession of the property (e.g. through default on a mortgage).

Retail shop leases

The *Retail Shop Leases Act 1994* (the RSL Act) sets out laws which apply to retail shop leases in Queensland. The RSL Act applies (subject to some exclusions) to:

- premises located in a retail shopping centre, and/or
- premises that are used wholly or predominantly for conducting a retail business.

It is important that as a retail lessor or tenant you are aware of your rights and obligations under the RSL Act before entering into a retail shop lease.

Disclosure Statements

Lessors must give retail shop lease tenants a disclosure statement (summary information about the proposed lease) at least seven days before the commercial lease agreement is entered into. **If the lessor fails to do so, the tenant may be allowed to terminate the lease within six months.**

Legal and financial advice reports

Retail shop lease tenants with fewer than five retail business leases are required to obtain legal and accounting advice on the terms and conditions of the lease and must get a legal advice report and a financial advice report signed by those advisors before signing a lease. These documents must be handed to the lessor before the lease commences.

Communication

Both parties need to be clear about the key contact points for any future discussion about the lease obligations and maintain open and respectful communication. Miscommunication is a key contributor to disputes and can escalate into unnecessary and costly conflict.

Tenants may also elect to pay for the services of a professional commercial lease negotiator or a [tenant advocate](#) who can use their experience to provide insights on specific lease terms.

More information

Read the [legal guide to business leases](#) from the Queensland Law Society.

Contact the QSBC by submitting an [online enquiry](#) or calling 1300 312 344.

This information provides general guidance only. It does not constitute legal advice. We recommend you seek independent legal advice which considers your individual circumstances and applicable laws.

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