

Options to renew

Options (or option to renew) are clauses in a commercial or retail shop lease allowing a tenant to renew their lease for an additional term. Options make premises more attractive to a tenant and a future purchaser of the tenant's business.

Options are not mandatory

An option is not required nor are they mandatory in a lease. Option clauses will vary depending on who prepared the lease and what was included when the agreement was entered into.

Important facts

When a lease is about to end and there are no options to renew it:

- the lessor may offer a completely new lease to the tenant (new rent, new terms).
- the lessor is not obligated to offer a new lease.

Since there is no lease in place at that point, this is a commercial negotiation.

- Mediation is usually not available through the QSBC to settle the rent in a completely new lease or a [commercial negotiation](#).

Failure to exercise an option correctly and in strict accordance with your lease can result in the tenant losing the right to renew the lease.

Terms of the option

- The option clause will usually provide that the new lease will be on the same terms as the existing lease, except that the rent will be reviewed in accordance with a [rent review mechanism](#) set out in the lease.
- Typically, the rent is the only negotiable item in the lease under an option clause.
- If a tenant exercises the option in accordance with the lease, usually, this binds both the tenant and the lessor to the further term and it cannot be withdrawn.

Top tips

- Options typically need to be exercised between 3 to 6 months prior to the end of the Lease.
- Consider the option 6 - 12 months prior to the lease expiring to allow for an informed decision.
- Research the current market and the expenses for staying vs moving

Considering the option

Information is key to informed decisions. Factors to consider whether to accept an option, negotiate a smaller or larger space, move premises or close the business include:

- the current business needs;
- the availability of suitable properties elsewhere
- whether the tenant has time to move
- the costs associated with staying (such as increased rent, outgoings, or bond)
- the expenses of moving equipment
- the cost of fitting out a new space
- whether the current space still meets the tenant's needs
- the cost of restoring the premises to its original condition known as '[make good](#)'
- the relationship with the lessor or their agent.

Seek support from a financial counsellor, accountant, tenants advocate or business advisor if you need help calculating the costs for the different paths at option time.

Exercising the option

How and when the option is exercised will depend on the specific requirements in the lease.

A tenants right to renew the lease is almost always subject to the following:

- The option has been exercised within the strict timeframe defined in the lease.
- The option has been properly exercised in the way set out in the lease
- The tenant is not in breach of the lease up until the expiry of the existing lease.

Options in retail leases

The *Retail Shop Leases Act 1994* (RSL Act) includes specific requirements regarding options to renew in a retail shop lease:

Withdrawing the option

A retail tenant can retract their option exercise notice if they don't receive an updated disclosure statement from the lessor within 7 days of issuing the notice, unless they waive this right when exercising the option as per section 21E(4) of the RSL Act.

Notice of approaching option date required

Under section 46 of the RSL Act, if a retail shop lease includes an option to renew, the lessor is required to notify the tenant of the deadline to exercise this option, known as "the option date," at least two months in advance.

However, the section does not prescribe any penalties for lessors or protections for tenants if this notice is not provided within the specified timeframe.

Lessor notice to tenant when no option

As per section 46AA of the RSL Act, if a lease lacks an option to renew, the lessor must notify the tenant in writing whether a lease renewal or extension will be offered or not. Notice periods are a minimum of three months for leases under a year and six months for longer leases. Failure to provide notice allows the tenant to request a six-month extension. The tenant may end the lease early during this extension by providing one month's written notice.

Resolving disputes

- Seek legal advice from a solicitor experienced in commercial property law.
- Establish whether you are negotiating a new lease or in dispute over an option to renew.
- Assess whether the notices and actions are consistent with the lease (and the RSL Act if applicable).
- Be clear, polite, and specific in your communication to increase the likelihood of a positive response.

If the tenant and lessor are unable to resolve the dispute, they may be able to [apply for mediation](#) through the Queensland Small Business Commissioner (QSBC). QCAT considers disputes related to retail shop leases **if the dispute is not resolved after mediation at QSBC.**

Courts consider disputes between a tenant and lessor [for non-retail shop leases.](#)

More information

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.