

# Negotiating Retail Leases

**Commercial leasing of shops such as antique shops, bookshops, fast food outlets, furniture showrooms, and restaurants which conduct businesses in New South Wales, are governed by the *Retail Leases Act 1994*.**

The Act has certain peculiarities and this article addresses the practical implications of them. It is asserted by the government of the day that under this Act, the lessee's (tenant's) rights are favourably protected.

**There are traps for the unwary and you should not sign a lease until you have fully considered all the relevant points and how they will apply to you.**

**The following points should be noted by the lessor (landlord) so as to avoid any unwanted or adverse outcomes when entering into a lease agreement.**

**These points should also be noted by the lessee (tenant) who intends to lease new premises (so as to increase its bargaining power).**

## Disclosure Statement

Section 11 of the *Retail Leases Act* provides that the lessee is to be given a **disclosure statement** prior to entering into a lease agreement. The statement is to be provided at least 7 days before a retail shop lease is signed.

A disclosure statement is a **statement in writing** that contains relevant information in the form as set out in Schedule 2 of the Act (see sample below).

If a lessee was **not given a disclosure statement** or if the disclosure statement that was given to the lessee was incomplete or contained information that at the time it was given was materially false or misleading, the lessee may **terminate** the lease by notice in writing to the lessor at any time **within 3 months** after the lease was signed.

## Review to current market rent

Section 19 of the Act which refers to *Reviews to current market rent* (a common provision under commercial leases) says that:

A retail shop lease that provides for rent to be changed to current market rent is taken to include provision to the following effect (summarised):

- (a) The current **market rent** of the retail shop is the rent that, having regard to the terms and conditions of the lease would be **reasonably expected to be paid** for the shop if it were **unoccupied**.
- (b) **Rent concessions** and other **benefits** are declared to be **relevant** matters to be taken into account in the assessment of current market rent.
- (c) The value of **goodwill** created by the lessee's occupation and the value of the lessee's fixtures and fittings are to be **ignored** for the purposes of the assessment of current market rent.
- (d) If the lessor and the lessee **do not agree** as to what the actual amount of that rent is to be, the amount of the rent is to be **determined by valuation** carried out by a person appointed by agreement between the parties to the lease.

A sample of the **disclosure statement** (as provided in Schedule 2 of the Act) looks like this:

### ADVICE TO LESSEES

1. Before signing lease agreements, lessees should ensure they fully understand the documents.
2. If there is any doubt, lessees should seek independent legal advice.

### TENANCY DETAILS

Address of Shop/Shop No. Lettable Area (sq.m.)

Permitted Use of Shop

Lease Period / /20 to / /20

Options

Finishes, fixtures, fittings, equipment and services to be provided by the lessor.

Lessee has to pay for the finishes, fixtures, fittings, equipment and services to be provided by the lessor: yes / no.

If yes, to what extent:

Finishes, fixtures, fittings, equipment and services to be provided by the lessee.

Hours of access to shop outside trading hours.

Date on which shop will be available for occupation by the lessee.

Lessor's requirements as to quantity and standard of fittings in shop.

Rent:

Method of Calculating Rent:

1. Commencement Date
2. Formula
3. Rent Reviews
4. Frequency
5. Nature

#### **OUTGOINGS TO BE PAID BY THE LESSEE**

DETAILS OF OUTGOINGS Estimate \$ p.a.

Air Conditioning/ Ventilation  
Audit Fees  
Building Intelligence & Emergency Systems  
Car Parking  
Child Minding  
Cleaning  
Electricity Energy Management Systems  
Fire Protection  
Gardening  
Gas & Oil Insurance  
Land Tax  
Lifts and escalators  
Local Government rates and charges  
Management Costs  
Pest Control  
Public Address/Music  
Repairs and Maintenance Sinking Fund for Repairs and Maintenance  
Security Sewerage Disposal & Sullage  
Signs Telephones (Public)  
Uniforms  
Water, sewerage and drainage rates and charges  
Others (specify)

Formula for apportionment of outgoings if the lessee is not liable for the total amount

Additional outgoings to be borne by lessee

#### **RETAIL SHOPPING CENTRE DETAILS**

Name of Retail Shopping Centre  
Address of Retail Shopping centre  
Suburb / Town Postcode  
Number of Retail Shops in Retail Shopping Centre

Total Lettable Area (sq.m.)

Parking Facilities at Retail Shopping Centre

Number of bays for customers \_\_\_\_\_

Number of bays for lessees \_\_\_\_\_

Facilities and services provided by the lessees

Changes or developments planned by the lessor for:

Retail Shopping Centre No Yes Attach details

Surrounding Roads No Yes Attach details

Core trading hours (the times when retail shops in the shopping centre are required to be open for business)

Tenant mix (attach floor plan showing existing and proposed tenancy mix of the precinct and the location of common areas and kiosks within the precinct) from time to time, subject to agreements or representations details of which are given in this Disclosure Statement.

Tenant Association No Yes

Attach details of constitution, voting rights, contributions

Contribution to retail shopping centre advertising and promotion No Yes

Lessee's contribution \$ per annum

#### **DETAILS AS TO INTEREST OF LESSOR**

Is the Lessor: Owner of the shop  
or Lessee of the shop

Give details of any rights and obligations of lessor under that lease that may affect the shop.

#### **DETAILS AS TO AGREEMENTS OR REPRESENTATIONS**

Give details of any other agreements between lessor and lessee, or representations made by lessor or lessee including those relating to exclusivity or limitations on competing uses..

*Comasters can advise lessors (landlords) or lessees (tenants) of their respective rights. We are able to prepare (or review) comprehensive lease documents, and also negotiate on behalf of clients.*

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**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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