

What if the premises are damaged?

Unless otherwise agreed, commercial tenants usually have an obligation to maintain the premises in good repair. This includes damage from fire, flood, lightning, storm and tempest. These obligations will extend to cleaning out the premises, repairing or replacing fixtures and fittings and ensuring repair of infrastructure for services and utilities (pipes, wiring), unless the lease makes this the obligation of the landlord. Your obligations under the lease will apply irrespective of whether the damage is covered by insurance. Essentially, you have the responsibility of returning the premises to the same condition it was in prior to the damage.

Renting in retail shop premises follows the same rule with the exception of not having to repair, maintain and clean common areas of the building and land.

Repairing structural damage to a building however, is usually the landlords' responsibility, depending on the extent of repairs needed. If any damage occurs you should first speak to your solicitor and insurance to clarify the best course of action as every case is different.

Government fees and costs

Be aware that you must pay state and local government fees such as lease registration, possible mortgage consent and survey fees. It is also advisable to speak to your insurer to identify if your general insurance covers business property. In consideration of the probabilities of natural disaster damage in Queensland, it is also recommended to explicitly discuss 'force majeure' clauses and definitions.

Legal costs

At your initial appointment, ask your solicitor about the legal costs involved in settling your lease. Professional legal fees may be charged by the hour or agreed in form of a fixed fee (called a retainer).

Looking for a solicitor?

You can find one via the Queensland Law Society referral service at qls.com.au or phone 1300 367 757.

A legal guide to

business leases

public information



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QLS/PBL_BUSLEASE_DEC2011



Many factors need to be considered before deciding where to locate your business. If you don't already occupy suitable premises, you will have a choice to buy or lease business premises. The right option for you can be better determined with the advice of finance and legal professionals, and the information in this guide.

Investigating and negotiating

Once you are certain about a suitable location for your business, make sure you know everything about the premises before negotiating with the letting agent. Be aware that there is no duty on a seller or agent to disclose that a property was damaged by natural disasters in the past.

You may be given a letter of offer or intention to sign. Never sign a letter of offer, letter of intention, lease or pay any deposit without understanding the terms and conditions you are agreeing to. It is always best to seek legal and financial assistance prior to committing anything to writing.

The lease

The lease document is a contract outlining the terms of possessing a property for a specified time at an agreed fee. There are some differences depending on the type of business, where you are located and the length of tenancy.

For your protection and to minimise litigation and disputes, have your solicitor thoroughly check the lease before you sign. Confusion often revolves around rent increase and renewal clauses, therefore a legal requirement exists for your solicitor to explain the lease to you.

Retail shopping centre leases

If you are renting premises where five or more shops are in one title, terms for retail business leases apply. The *Retail Shop Leases Act 1994* restricts terms, such as rules for opening hours and products that can and cannot be sold. It may also impose promotion and advertising costs on lessees.

Short-term renting

Short-term leases provide you with flexibility but they also expose you to the risk of not being able to renew your lease or recover the investment in the business. The terms of maintaining the premises are usually the same as for long-term occupation. Consider and discuss options with your financial advisor and solicitor.

Long-term leases

Renting for longer periods of time will ensure stability but may have a bigger impact on your finances if you are not able to trade. To ensure your rights as a long-term occupier are officially recorded and protected, tenancy agreements for more than three years require registration of the lease with the Department of Environment and Resource Management (DERM Titles Registration).

Terms of the lease

The terms of a lease are negotiable so it is important that you have your solicitor inspect the lease to be sure the terms are fair. Consider the:

- duration of the lease and right to renew or end the lease before it expires
- formula for calculating and reviewing the rent
- possibility of sub-letting the premises
- restrictions of local town planning laws on types of services or goods that can be traded and trading hours
- rights to end the lease if the premises are damaged or destroyed
- limitations to your ability to transfer or assign the lease if you decide to sell, and the expense of doing so (transferring a lease may still leave you with some liability for the rent) – ask your solicitor to explain this to you
- responsibility to pay for rates and taxes, outgoings, such as garbage, air conditioning, marketing (signage) and all the additions, improvements, and fixtures made during the lease
- types of insurance required, who will pay for it and who obtains it
- restrictions on the removal of fixtures and fittings
- obligation to remove partitions and reinstate the premises after expiry of the term
- consequences of failing to pay rent
- implications of the *Retail Shop Leases Act 1994* and whether it applies to your lease
- payment of a security deposit and the terms of a personal guarantee
- terms of any guarantee and indemnity which directors of a corporate tenant may be required to give
- the impact a lease may have on a franchise agreement.

Securing your interests

Apart from negotiating the best possible terms, there are two disclosure requirements to ensure transparent lease negotiations and adequate risk management.

- Lessee disclosure statement: Your solicitor will explain all your obligations in order for you to declare that you are able to meet all financial obligations and that you have provided copies of financial and legal advice reports to the lessor.
- Lessor disclosure statement: The seller has a legal requirement to disclose sufficient information for you to make a sound commercial decision. The statement provides you with comprehensive premises details and protects you from entering leases on false pretences.

If needed, mortgagee consent as well as title clearance will be obtained by the solicitors. Your solicitor can advise you on competing interests and your responsibilities under the body corporate rules if the premises are part of a community title.

If you and your landlord make verbal agreements during the lease, it is advisable to note it in a legally binding document to which both parties agree.

Approved lease

The lease is sent to the tenant's solicitor for their approval or amendment. Once the terms are finalised, the tenant, followed by the landlord will sign the lease.

The landlord's solicitor will arrange for the lease to be transferred and, if the term of your lease is more than three years, it must be registered to protect your ongoing occupancy rights, eg if the premises are sold.

Registration with DERM will incur costs. If an option to purchase the leased property is included in the lease, registration is essential regardless of the term of the lease.