

COMMERCIAL LEASES

Signing a commercial lease can be a daunting and consequential decision for you and your business. A commercial lease is a serious commitment that can last a long time. Leases can be hard to get out of and being stuck in an unfavorable lease can be unpleasant. It is important to seek advice from a lawyer before signing anything.

If you are a landlord or tenant, it is important to have a Lease Agreement with terms that suit you and your circumstances. For example, for a new or small business, it might be preferable to begin with a short-term lease; to avoid a difficult situation if things don't go as planned – as is often the case in the fast-changing world of business. As a landlord, it is important to be party to a lease that protects your investment and its financial return.

WHAT IS A COMMERCIAL LEASE?

A Commercial Lease is a lease of a commercial premise (*a workplace*). A commercial lease is not the lease of a residential premise (*a home*).

For reference the following are the parties involved in a lease:

Tenant: the person who pays the rent.

Landlord: the owner of the property.

WHAT IS IN A LEASE?

A Deed of Lease is a formal document that governs how a property is to be leased, and the roles and responsibilities each party is contractually obliged to undertake.

A Deed of Lease typically builds on the Agreement to Lease, if there was one. An agreement to lease is a preliminary document that often is signed before a Deed of Lease (*but not always*). A Deed of Lease includes and sets out the terms and conditions that govern the contractual relationship between the landlord and tenant.

A Deed of Lease will typically include the following:

Obligations:

- Tenant's Obligation
Landlord's Obligations
- Who pays the legal costs?
What the property can be used for
How the property is maintained
- GST obligations

Rent:

- When the rent is to be paid
- The cost of rent
- How to review rent prices

General Terms:

- Who the tenant is?
Who the landlord is?
- Start date of the lease.
End date of the lease
- What the property is being leased for
- Whether the lease can be transferred to other people
If the Lease can be reviewed, and if so how
- How to cancel the lease
- Dealing with disputes under the lease
Role and any guarantor insurance responsibilities

Costs:

- Who pays for various outgoings?
- What happens if there are damages to the property

THE DIFFERENCE BETWEEN A DEED OF LEASE AND AN AGREEMENT TO LEASE

There are often two documents involved in leasing a commercial property. A Deed of Lease and an Agreement to Lease.

Deed of Lease:

This is a formal document that governs how the property is going to be leased and dictates what roles and responsibilities each party are to abide by. The Auckland District Law Society created a Deed of Lease template that is commonly used for commercial leases in New Zealand. There are many versions of this floating around; the most current is the 6th Edition (2012).

Agreement to Lease:

This is a preliminary document and does not replace or act as a Deed of Lease. The purpose of an Agreement to Lease is to set out the basic terms and conditions of your lease before you sign the Deed of Lease.

An Agreement to Lease is usually signed to provide assurance to one party before the Deed of Lease is signed, and if a condition needs to be met before the lease goes unconditional. It is important to note that when signing an Agreement to Lease it is very hard to release yourself from the agreement you've made.

IMPORTANT THINGS YOU SHOULD KNOW ABOUT YOUR LEASE

What I am Obligated to do Under my Lease?

A lease governs what duties and responsibilities each party are to follow. One of the most common disputes is for tenants and landlords to disagree over who is going to pay for fixing damage and maintaining the property. As a landlord or tenant, it is important you know what these are, and what they mean for you (*and your business*). Knowing what these are helps if issues arise under your lease, or to ensure that issues do not arise under your lease.

My Landlord wants to Raise my Rent, is this allowed?

It is common for a lease to include a clause regarding rent review. There are two methods that govern how rent may be changed. The purpose of this clause is to account for any changes in the economic/market conditions. These are:

1. Market Rent Review
2. Consumer Price index Review

It is important to know which one is agreed on because these clauses can cause complications during a lease. It is good to talk to your lawyer about this and understand what you're signing up to and what you, as the Landlord or Tenant, are required to do when reviewing rent prices.

What to do when you want to renew your Lease?

It is common for leases to have a clause regarding rights of renewal. Just like with rent review and duties and responsibilities, it's important you know what is expected from you in order to renew the lease.

In the case that the lease is not renewed or terminated, it will automatically turn into a month-to-month basis lease where either party can give 20 working days' notice to terminate. This can put both parties in a vulnerable position, so it's best you decide to renew or terminate your lease in the time frames required by the lease agreement.

As a tenant, it is important to remember that your lease does not renew automatically, and you will likely need to inform your landlord three months before the lease expires that you intend to renew your lease. In the case that you fail to give notice in the time frame required (*by your Lease agreement*), you might lose your right to renew.

It is also important to remember, that as a landlord, if your tenant follows the requirements set by your lease agreement you have to agree to the renewal of the lease (*except if they are in breach of the current Lease Agreement*).

Are both parties identified correctly in your Lease?

There are lots of things that are important in a lease agreement. But, one of the most important things is to ensure that both parties are identified accurately in the lease agreement.

Make sure, as a Landlord, to do your research on the business who is about to rent your property. Good things to know are, when they started their business, are they financially stable. And ask yourself, do the outcomes of these questions show that they can pay their rent?

As a tenant, make sure you do your research too. The last thing you want to happen is your landlord goes broke and your lease becomes void. Most importantly be sure to remember that your landlord is the legal owner of the building.

Doing these things can help if there are any issues that arise under the lease, and if legal action arises from that.

If I'm a small business, is a Long Lease a good idea?

A Lease can last a long time. If you're a new business, or your thinking of Leasing your property to a new business, it could be beneficial for both parties to negotiate a shorter Lease term with the expectation that the Lease will be renewed.

What gives rise to the cancellation of a Lease?

You may be asking, especially if you're a landlord, what if my tenant fails to pay rent, or breaches the Lease Agreement? Can I cancel the Lease?

If your tenants rent is 10 working days overdue, or they breach a term of your Lease Agreement you can cancel the lease by following the correct procedure.

You must:

- Serve a notice of intention to cancel the Lease. The Property Law Act requires that your notice of intentions requires a number of clauses that make it a valid notice of intention (*among other things*).
- If the breach has not been remedied by the Tenant, before the date specified on the Notice of Intention, the landlord can cancel the Lease.

Remember that this can be a complicated process and doing one thing wrong could mean that you haven't terminated your Lease. Talk to your Lawyer about what you need to do, and the best way to do it.

Is it normal for the landlord to request a personal guarantee?

If you are a company or a trust it is really common for the landlord to request that a partner or director of the company becomes a guarantor. It is a simple way to protect the landlord from a bad tenant. A personal guarantor or a deposit is highly recommended when the tenant is a company. This means that this person is responsible, in the case your company fails to pay rent, to pay the overdue rent and is personally liable for this debt.

This is a huge responsibility for this person, and it is important that this person understands the obligation upon them before signing up to this. It is important that you speak to your Lawyer before you agree to this, to protect your from making a silly decision.

What outgoings am I liable to pay?

The process of dividing outgoing up can be contentious. Your Lease Agreement should tell you what outgoing you could be liable for. Often you won't sign up to pay these outgoings, so make sure you know what you are required to pay for, or what you could be required to pay for.

WHY DO I NEED A LAWYER?

Especially before you sign anything, it is best to see a lawyer first. A lawyer is specifically skilled and trained in understanding complex areas of law. They are able to help you get through complex situations, understand what you need to know, and protect you from getting into complex predicaments.



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