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LAWYER SECRETS

for

NEGOTIATING YOUR LEASE

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Secret No. 1

Negotiate a fitout or other rent incentive

Landlords are often unwilling to negotiate a reduced rent.

Lower rents may negatively impact future rents for other tenants and may also decrease the value of the building if the Landlord sells.

Landlords may be more agreeable to giving you a contribution towards your fitout (a high quality fitout may increase the value of the building) or an initial rental incentive e.g. 3 months rent free. So, if negotiations stall on the rent amount, ask for something else.

These agreements are often documented in a separate incentive deed.



QUICK TIP!

If your total lease term is more than 3 years you should consider registration of the lease to protect your interests!



DID YOU KNOW?

Shop leases in Queensland are governed by the Retail Shop Leases Act QLD. This Act incorporates certain terms into your lease and may change your rights and obligations regardless of the terms of the lease itself.

Secret No. 2

The Heads of Agreement

A Heads of Agreement (“HOA”) lists the important terms agreed between you and the landlord.

It is a good idea because you will be clear on the terms agreed and it is generally prepared by the agent before entering into the lease.

The solicitors will then base the lease on the HOA.

It is important that the HOA states that it is not binding (unless you want it to be!). Ideally you will wait until you have an actual lease before you are bound by the terms of the lease.

Some landlords will state that the tenant is required to pay a deposit and it will not be refundable if the tenant does not sign the lease. Clauses like this should be removed.

Secret No. 3

Early Determination of Market Rent

Many leases have an option to renew the term of the lease and the rent for the first year of the renewal term will be “market rent”.

You may be required to exercise your option to renew without knowing what the market rent will be.

The Retail Shop Leases Act QLD (the “Act”) governs retail leases in Queensland (there are generally similar terms in each state and territory).

The Act provides that you can request an early determination of the market rent from the landlord and that the landlord must give you that determination before you are required to exercise your option to renew.

That way you know the rent you will be bound to when exercising your option to renew.



QUICK TIP!

If you need to give a notice to the landlord check the lease to see if you can give the notice by email. You may have to give notice by post or hand delivery!



DID YOU KNOW?

If you have a dispute with your landlord the lease may outline a dispute resolution process. Mediation is available and if you can't resolve the dispute you can lodge a notice of dispute with QCAT.

Secret No. 4

Use of the Premises

- *The lease will specify the purpose for which you can use the premises. For example, if the lease says you can use the premises for a bakery then you will not be allowed to use it for a coffee shop, unless the landlord consents in writing. You must make sure the description accurately describes the business you will operate;*
- *Your use of the premises will not be exclusive unless the lease specifically states it is exclusive. For example, if you lease the premises for a coffee shop then the landlord is allowed to grant leases in the building to other coffee shops unless your lease says you have exclusive use.*
- *You must make sure you are allowed by Council and Government rules to use the premises for the purpose you intend. You will still be bound by the lease even if you can't use the premises for the intended purpose.*

Personal Guarantees and Security

If you enter into the lease through a company or a trust then the landlord will usually require the directors or the beneficiaries to provide personal guarantees.

The guarantors will be liable under the lease as if they are named as the tenant.

If the actual tenant breaches the lease then the landlord can pursue the guarantors personally for the loss the landlord suffered.

The landlord will usually want some form or security bond also. This is paid as either a cash deposit or a bank guarantee.

If you default under the lease then the landlord can use the security amount to remedy the breach.

The landlord may be willing to negotiate the value of the security. For instance if the landlord asks for the equivalent of 6 months' rent you can try to negotiate down to 3 months.



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Rent Reviews and Other Costs

Your rent will increase each year. You should factor this into your business projections.

Landlords will often want the rent to increase by a set percentage each year. Often a lease will provide for a CPI increase or a set percentage increase whichever is the greater. At this point in time the percentage increase will always be greater than the CPI increase. You should negotiate the lowest percentage possible (obviously).

Outgoings may be payable in addition to the base rent. The landlord must disclose the outgoings you will be required to pay for the first year of the term before you enter into the lease.

Turnover rent is sometimes payable as additional rent. If your turnover reaches a certain amount then you are required to pay a percentage of the extra turnover as rent. This way the landlord benefits if you succeed in your business!

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Disclaimer: *This is not legal advice. You should seek your own legal advice for your circumstances. Do not rely on this ebook without consulting a solicitor.*