

Top 10 Leasing Tips and Traps

Most businesses will start life in leased premises but this everyday business necessity can be more complex than initially appears and contain traps for the unwary. Here is a list of 10 common leasing tips and traps:

1. Offer Letter

The first document you will typically be asked to sign is a letter of intent or offer letter. Ordinarily the parties are not bound to an agreement at this early stage however depending on the wording of the letter this may not always be the case.

Usually prepared by the landlord's agent, a letter of intent can sometimes create a binding agreement between the parties which may not be what you intended.

It is prudent to have your solicitor review the offer letter before you sign.

2. Prior Representations

The final signed lease will typically represent the entire agreement between the parties. Representations made prior to entering into the lease will ordinarily not be able to be relied on unless they are included in the lease.

Accordingly before you sign a lease you or your legal representative need to ensure the lease reflects your entire understanding of the deal.

3. Costs and Expenses

Clearly understand and define what costs and expenses you are liable for under the lease. For example, if you are responsible for the 'repair and maintenance' of the air-conditioning unit, this may well mean you are also responsible to 'replace' the air-conditioning if required which could prove to be very costly.

You are better off clearly defining each party's responsibilities than to leave it to interpretation.

4. Indemnity Clause

Will you seek or are you prepared to give an indemnity? Typically a lease will include some form of indemnity clause. A reasonable indemnity clause should exclude liabilities that arise due to the actions of the party seeking the indemnity, unfortunately quite often they do not.

Additionally, as the rights under an indemnity can be greater than at common law, if you do not obtain consent from your insurer when granting the indemnity you risk not being insured for amounts recoverable under the indemnity.

You should always obtain the consent of your insurer to ensure indemnities will not affect your insurance.

5. Assignment and Subletting

Is there a possibility you may want to sublease part of your premises? Note the terms of the lease relating to assignment and subletting. In tough economic times a tenant may want to assign their lease or sublet part of their leased area.

The lease may prohibit assigning or subletting the lease unless certain conditions of the landlord are met or even provide for a blanket prohibition on assignment or subletting.

6. Tenant's Fixtures

Clearly define what items you want to be able to remove at the end of your lease. Typically an item affixed to the land becomes part of the land and therefore property of the landlord.

Accordingly, specify in the lease any 'tenant's fixtures' you want to remove at lease end.

7. Car Parking

Will car parking be included in the lease? It is common for the landlord to grant a licence to use car parking bays pursuant to a term in the lease. Often the landlord can revoke the licence at any time.

It is preferable to link the period of the licence with the term of the lease so that when the lease ends the licence ends and not sooner.

8. Licences and Permits

Are you allowed to conduct your type of business from the premises? Ensure that your proposed use for the premises is permitted under planning laws and that you are able to obtain any licences you require to operate the business. It is standard for a lease to provide that you will continue to be responsible to comply with the terms of the lease even if your proposed use is not permitted.

9. Lease Registration

What would happen if the landlord sold the land where your premises are located? In Queensland it is good practice to register a lease when the initial lease term exceeds three years to protect the tenant's interest in the event the landlord sells the freehold. However it is also recommended to register a lease where the initial lease term plus the option exceeds three years in order to protect the tenant's right to the option.

10. Mortgagee Consent to Lease

If there is a mortgage over the land being leased it is prudent to have the landlord seek the mortgagee's consent to the lease. Without the mortgagee's consent a mortgagee may not be required to recognise your lease if they were to take possession of the land.

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Contact WadeLegal today if you would like any advice from our leasing lawyers in Brisbane.

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