

What is an Agreement to Lease?

When renting business related property it is important for both landlords and tenants to understand the relationship they are entering into and the rights and obligations that they each have, the document that governs this relationship is usually a Commercial Lease.

A Commercial Lease gives the tenant an immediate right to take possession of premises and occupy those premises to the exclusion of all others, including the landlord or owner.

An Agreement to Lease is used prior to a Commercial Lease being signed in circumstances where there are things to be done before the landlord can give the tenant exclusive possession of the premises.

An Agreement to Lease documents each party's rights and obligations and sets down all of the requirements that have to be satisfied prior to the terms of the actual Lease taking effect.

An Agreement to Lease can be very useful for both landlords and tenants and it is important to understand the relationship being entered into and the rights and obligations of each party.

When to use an Agreement to Lease

An Agreement to Lease is often used when:

- the tenant needs to obtain consent from someone, say for a particular use of the premises
- the premises are being purpose-built for the tenant; or
- an existing building is being renovated before the tenant moves in; or
- the current tenant may be moving out but has not given up possession, often the case in shopping centres.

Completion of the works, fit out, consent or delivery of vacant possession is usually taken into account to set the start date of the Lease.

The benefits of an Agreement to Lease

An Agreement to lease creates a binding obligation on both parties to enter into a lease on agreed terms, subject to agreed conditions being completed. This creates more certainty for the parties where money is to be spent before the Lease commences.

If you are a landlord undertaking building and renovation work to rental premises is a significant cost to you in time and resources. It is a period of down-time where no rental

monies are received and is best kept to a minimum. You may have to obtain Council approval for building work which takes time and you will have to contract and co-ordinate the many tradespeople to complete the works.

If you are a tenant you will want to make the best possible use of the premises from the first date you pay rent, being able to complete these works before the Lease commences is essential. It is also important that no inconvenience is caused to your customers by building works in your business.

Issues commonly covered

Consents

If the premises are not tenanted or the use of the premises is changing you may have to apply to Council or other authority for consent to use the premises for a particular type of business such as a café or a service such as a medical office.

Consent may also be required from a mortgagee of the premises or a licensing authority if the business requires a licence to operate.

Obtaining these consents can take time and can be done under the terms of an Agreement to lease.

Fit out works

A Works Schedule is often attached to or is contained in the Agreement to Lease and sets out what works are to be done and who is obligated to do the works – landlord or tenant.

Often plans and specifications are attached to the Agreement and this is useful in the event that the landlord and the tenant have a difference in opinion of what exactly is required.

The tenant is usually responsible for some of the fit out items or the landlord directs the tenant as to how the premises must be fitted out. In a shopping centre for example, the landlord may have design guidelines that the tenant must follow when fitting out the premises. If the tenant has control over the design of the premises then they often have to get permission from the landlord for the works and provide plans and design drawings to the landlord for approval.

If the tenant is doing most of the fit out the landlord will often specify a commencement date for the Lease even though the tenant's fit out may not be completed. The tenant should be organised as early as possible with design and trades to minimise the period that they are paying rent but may not be open for business.

Time frames

The Agreement to lease will usually have a time frame for completion of the conditions as the works or consents will usually have to be completed prior to the Lease commencing.

Delays may occur and it is important that a workable time frame is in place prior to entry into the Agreement to Lease.

The tenant should also ensure that there is a “sunset date” in the Agreement to Lease in case the works being done by the landlord are not completed in time or the required consent has not been given. The tenant may then be able to terminate the Agreement and find alternate premises rather than being delayed further.

Other provisions

The Agreement to Lease will usually have a copy of a draft Lease attached to it so that the terms of the Lease are clear to the parties and agreed from the outset.

The terms of the Lease should be reviewed by your lawyer before an Agreement to Lease is signed.

Common provisions in a Lease which may require review include, any options for renewal, the commencement date which may be the “hand over” date, the fit out period if any, the amount of rent payable, rent review dates and method (often the CPI adjustment or a specified percentage), outgoings and promotional costs payable, what use is permitted at the premises, insurance and guarantee requirements, works to be completed by each party and time frames for works completion, de-fit costs or what the tenant must do to “make good” the premises when they vacate. Attachments to the Agreement to Lease may be a “works schedule”, plans and specifications, tenancy listing.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9600 0162 or email info@lordlaw.com.au.