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Commercial Lawyers

A Guide to Buying Commercial Premises

Buying a commercial property (such as a warehouse, office building or retail space) is more complicated than buying a residential property. There are complex contract terms, detailed planning information and additional legal and commercial implications if the premises are leased.

In this article we set out some of the key issues in relation to buying a commercial property.

Contract for sale

The contract will typically be prepared by the seller's lawyer and will set out the terms and conditions for the sale of the property. Essential terms will include, for example, a description of the property, the purchase price, a list of any fixtures or fittings that are included in the sale and the settlement date.

The contract will also include detailed special conditions which relate specifically to the property and the terms on which the seller is offering the property for sale. These special conditions need to be examined and explained to the purchaser by a lawyer who is experienced in the purchase and sale of commercial properties.

The sale of each commercial property is a unique transaction and general terms in the contract will usually be negotiated and varied by the parties.

Name of the purchasing party

In commercial sales, it is important to ensure that the contract correctly identifies the entity buying the property. There are a number of different entities which can purchase commercial property including individuals, individuals in partnership, companies, trustees of discretionary trusts, superannuation funds or a combination of entities.

If you are thinking about buying a commercial property you should speak with your accountant or lawyer prior to the purchase about the buying entity which best suits your tax or asset protection needs.

If the sale is completed and you decide that someone else should own the property (for example, a trustee of a trust) then this could require a transfer of the property and payment of additional stamp duty and capital gains tax.

Goods and services tax

The sale of commercial premises will often attract GST. Whether or not you are required to pay GST on the sale price of the property can make a significant difference to your cash flow.

GST is generally imposed where a seller is registered or required to be registered for GST and is conducting an “enterprise”. If you are the buyer and registered for GST, you can claim the GST component in your next business activity statement, however, you will need to pay the money upfront to the seller.

There are some exemptions to the application of GST. For example, a seller does not need to apply GST if the property is part of a “going concern”. This might apply if the property is a business premises or a tenanted building. A seller may also be able to use the margin scheme to work out the GST that applies to the sale of the property. This should be detailed in the contract.

When it comes to GST in commercial property it is important to seek advice as it can affect the amount required to be paid at settlement and the stamp duty which is assessed as payable.

Existing leases

A buyer is bound by any leases disclosed in the contract of sale. If you are buying premises subject to a lease you should have the lease reviewed by an experienced lawyer. That is because the specific terms of the lease can have an impact on the commercial viability of the purchase. A lease to a poor tenant, paying under market rent, for a lengthy lease term is a vastly different commercial proposition to a lease to a quality tenant paying market rent.

Due diligence

There are a number of searches and enquiries, including legal, physical and technical, which should be carried out when purchasing a commercial property. These include rates and water search, title search, company search (if the seller is a company), a search of the contaminated land register and land tax search.

A buyer can consider inserting a clause in the contract that the purchase of the property is subject to the buyer being satisfied with its due diligence inquiries, to be undertaken within a specified time.

Conclusion

Purchasing a commercial property is an important investment decision with significant financial implications. A good lawyer can help you negotiate the sale contract and ensure that your interests are protected during the purchasing process.

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.