

Why you need a lawyer in your next lease transaction



The leasing of a commercial warehouse, office or hardstand is often underrated and plays second fiddle to buying a property. But while entering into a commercial lease will generally involve significantly less capital investment than a property purchase, there are ongoing legal and financial obligations to consider carefully. If you do not treat a lease as carefully as a property purchase, the financial and business consequences could be disastrous.

The Hunt & Hunt property team has worked with a variety of transport and logistics companies; freight forwarders; and customs brokers. From our experience in property here are some reasons why it pays to seek the guidance of a lawyer before you commit to your next lease transaction.

Save money

- Getting a lawyer to review the Heads of Agreement before you sign could save you tens of thousands of dollars over the life of your lease. Heads of Agreement documents can contain onerous commercial terms that are glossed over in the heat of the deal. Once you have signed the Heads of Agreement you will almost always find that the landlord, its lawyer and the agent will resolutely refuse to depart from the commercial terms – you are locked in.

Permitted use of the property

- Are you actually allowed to use the property for your intended purpose?

Example

You sign a Heads of Agreement and enter into the lease only to find a neighbour complains to council about your use of the premises. Further investigation reveals you need a planning permit for the use. You apply for the planning permit and it is rejected. Council requires you to cease the use. You are then stuck with a useless lease but compelled to comply with its obligations for years. The lesson here is that you need to get advice on the relevant controls in the local planning scheme before you commit to anything binding.

Unexpected rent increases

- You don't pay enough attention to the annual rent reviews or the rent reviews on the renewal of lease. The devil is in the detail.

Surprise costs

- You fail to adequately assess the outgoings and find out that after you have committed there are onerous owner's corporation fees. You'll be paying these for years.

Hidden rules

- You fail to conduct adequate due diligence and don't notice onerous and unusual owners corporation rules that adversely affect your use of the premises.

Access to essential services

- Inadequate attention is given at the negotiation stage to matters such as the services at the building like air-conditioning, heating, access, car parking.

Avoid delays

- Your access to the premises is delayed because you have failed to properly understand and document the bank guarantee and insurances requirements meaning your lead time for fit out works is adversely affected.

Onerous obligations at the end of the lease

- You find yourself stuck with unusually onerous and expensive make good obligations in the lease. Not a worry now but in 5, 6 or 10 years the costs could be enormous. As a tenant you should always ensure that the make good is subject to fair wear and tear otherwise your make good obligations will be considerably higher and more expensive.

Example

You leave forklift tyre marks on the slab but the landlord asks you to remove them. You find out the tyre marks have bled into the slab and cannot be removed. You end up having to pay for a replacement slab.

Preventative steps

- You fail to conduct a condition report at the start of the lease resulting in a costly dispute about the condition of the premises at the start of the lease and the consequent level of make good works.

Legal developments

- The breadth of the Retail Leases Act is getting ever wider. A warehouse or office lease may well in fact qualify as a retail lease. This will afford you the benefit of consumer protection laws. However, you'll likely need a lawyer to help you navigate the process.

Example

You fail to adequately carry out due diligence about contamination at the premises and end up having to clean the land at the end of the lease as part of your make good obligations even though you did not cause the contamination.

This is just a grab bag of tricks, hardships and oversights typically encountered in the largely unseen, unknown and unconcerned world of commercial leasing. More dollars spent on proper advice at the outset might be money well spent.

Our experienced staff are just a no obligation, no charge initial phone call away. Can you really afford not to engage an experienced lawyer?



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Tony is practice leader for our Melbourne property team. He acts for a diverse range of clients including transport and logistics operators, freight forwarders and customs brokers. Tony also leads the delivery by Hunt & Hunt of legal services to over 30 statutory authorities and government departments pursuant to the Victorian Government Legal Services Panel. Tony's positive attitude and passion for the law results in the delivery of commercial and practical solutions for his clients.



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Neil's main areas of expertise includes drafting agreements and coordinating sales and acquisitions of commercial and residential real estate transactions, due diligence investigations, subdivisions, commercial leasing transactions including agreements to lease, Victorian retail leasing legislation and telecommunications leases. Neil also has related experience in sales and acquisitions of businesses that involves transfers of leases and land. Neil advises on ancillary real estate issues such as mortgages, GST, state land tax, stamp duty and retirement villages.



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Lachlan commenced working with Hunt & Hunt as a Graduate in March 2016. Following his admission to the Supreme Court of Victoria in February 2017, Lachlan has hit the ground running, becoming an integral member of the property teams. Lachlan works with a range of private, commercial and public sector clients. His approachable manner combined with his steadfast application to all matters leads to positive outcomes for his clients.