

Checklist for a lease agreement that's right for you

Did you know?

Lease agreements are not a case of 'one size fits all'. They are **negotiable**. Before you sign anything, negotiate on all the conditions relevant to your lease agreement.



Main topics:

- Questions you should be asking
- Questions you may have to answer
- Questions you should ask about shopping centre leases

Questions you should be asking

Checklist questions	Tips to get you prepared	Tick (✓)
Has the landlord given me all documents which are legally required by the Retail Leases Act 2003?	The landlord must give a tenant: a copy of the lease; a disclosure statement; and a Small Business Commissioner Information Brochure.	
What is the duration of the lease and have I got an option to renew?	This needs to be clearly stated. It's usually a much cheaper exercise to extend a lease than it is to arrange an early termination.	
What will be my arrangements for rental payments?	The most convenient arrangement is to set up periodic payments through your bank. This also protects you from late payment charges.	
Will any other fees apply to the lease agreement?	Although it is not common, fees can be charged for things like monthly billing. It is worth asking this question before signing the agreement.	
Will the cost of your rental payments be tax deductible?	Before you sign off, you should also discuss the deductibility of rent and your tax liabilities with your financial adviser.	
Who is responsible for rates, taxes, insurance and other outgoings; for example, contents insurance or council and water rates?	Outgoings and who will pay for what should be an essential part of the negotiation process, and made clear before anything is signed.	
Who is responsible for maintaining the premises, fixtures, fittings and equipment?	Responsibilities for the building and any equipment are often shared between landlord and tenant. The agreement should make this clear.	
Who is responsible for costs associated with creating the lease?	As the tenant, you are not responsible for the landlord's legal costs, but there could be other lease set up costs you will be asked to pay.	
Does the agreement have an option to purchase any leased goods or equipment?	Be careful. Any agreement for you to purchase leased goods or equipment will invalidate your right to claim rent as a tax deduction.	
How will the lease be documented?	Ask the landlord if they can offer a 'Master Lease' which means there is no need to sign an individual document for each item being leased.	
How will the depreciation limit affect rental payments?	If a luxury car is being acquired, this could affect the depreciation limit on your rental payments and should be made clear before you sign.	
When and how could the rent be reviewed and varied?	This could be based on: your turnover or profit; the Consumer Price Index; or a flat percentage increase. It needs to be made clear.	
Does the agreement allow for an early termination of the lease?	Be very clear about this. Leases are usually non-cancellable and an early termination can be very costly for the person who is leasing.	
Will the lease have a Permitted Use clause outlining how the premises can be used?	If the lease has a Permitted Use clause, make sure it's not relevant to your operations, or stop you from any future business development.	
Will the lease have a Right of Assignment clause?	If you think you may need to sell the business, a Right of Assignment clause gives you the option of transferring the lease to a new tenant.	
Does the landlord have a mortgage on the premises and has the lending authority (for example, bank) given approval for the lease?	If the lending authority has not given their approval for the lease to go ahead, they are not legally bound by it and may be able to evict you.	
Are there permits, registrations or other licences which could affect lease negotiations?	As an example, if your business set up depends on getting a planning permit and a liquor licence, the lease agreement should refer to this.	
When the lease expires, what are my options?	Options are: renewing the lease; trading leased equipment for new equipment; and returning or offering to purchase leased goods.	

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Questions you may have to answer

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What do you want to use as your name on the lease?	The name required is that of the actual applicant, individual/s or company. An incorrect name will delay final settlement of the lease.	
What is the address of your business or company?	This should be the registered address of your business or company, and give both your operating and postal addresses if they're different.	
Do you have partners or directors?	Landlords can ask for names, private addresses and dates of birth of partners or directors in order to complete credit investigations.	
Are there other names and addresses you may need to provide?	You may need to give contact details for your accountant, bank and references. References should be from suppliers providing credit.	
What is the nature of your business?	This is simply a brief summary of your business operations which will help both parties achieve the right leasing and rental agreement.	
Will the purchase of equipment be part of your set up?	As part of the lease agreement, you could be asked for a detailed description of equipment purchased, complete with serial numbers.	
Are you aware that ownership of some fixtures or equipment will be included in the terms of the lease agreement?	A written acknowledgement of the landlord's ownership of fixtures or equipment may need to be included as part of the lease agreement.	
Can you provide an estimate of your leasing requirements for the next twelve months?	Estimating your leasing requirements for the next twelve months means lease agreement negotiations can be limited to once a year.	
How long have you been operating as a business?	Landlords are not keen on tenants with little experience. If you're in this category you'll need to provide evidence of a strong cash flow.	
If you're negotiating for lease credit, what financial statements can you provide to support your case?	You need to show: the net worth of your business; a profit and loss statement; evidence of cash flow surplus; an estimated cash forecast.	
Are you aware that by signing the lease, you are legally bound to pay rent and outgoings for the full term of the lease?	This financial commitment should be spelled out in your business plan. An early termination of the lease could be financially devastating.	

Questions you should ask about shopping centre leases

Checklist questions	Tips to get you prepared	Tick (✓)
What will be my level of competition in the shopping centre?	Larger centres often have an over-supply of similar businesses. An accurate picture of your level of competition is necessary for survival.	
Is there clear identification of the space I'm leasing and all the associated facilities?	You need clear identification of your leased area, parking and delivery facilities, and common areas like walkways. Ask for a site plan.	
What are the centre's core trading hours?	This may sound obvious but make sure the trading hours match your business and if they don't, ask if there is any room for negotiation.	
When I'm fitting out the premises, will I have to conform to any fit out rules the centre may have?	Fit outs are generally more restrictive for shopping centres. You need to know exactly what is required and what the cost will be.	
Will I be required to contribute financially to the centre's marketing and promotional activities?	If the answer is yes, try to negotiate a reasonable figure. If the answer is no, make sure this is not a hidden addition to the rent.	
Does the ownership have plans to redevelop or expand the centre, and could my business be impacted?	You are entitled to know how the centre's long term plans could affect your business; for example, relocation to a less desirable position.	

For more information:

- call Business Victoria on 13 22 15
- visit the Business Victoria website at: business.vic.gov.au
- visit a Victorian Government Business Office (VGBO). For a list of VGBO locations go to: business.vic.gov.au/vgbo

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