

FREQUENTLY ASKED QUESTIONS FOR LANDLORDS



OUR SERVICES

Our leasing & property management services

We work extremely hard to lease your property to a quality tenant.

Firstly we invest in specialist staff training, carefully developed internal quality systems, databases and leasing programs.

We spare no effort to recruit and retain high quality experienced operators with a record and passion for high performance.

We provide recommendations on preparing the property for lease as well as proposing marketing elements such as boards and the internet to generate quality enquiries. We keep you informed of our progress throughout.

Upon finding a prospective tenant we make every effort to ensure they have good references and provide them to you for review. We also consider whether they are a suitable business for the property that will ultimately add value to your investment.

The following is a guide only and it is strongly urged you read all associated documentation and make your own enquiries.

What do I need to know about leasing commercial & industrial property?

Leasing commercial and industrial property is different to leasing residential property. Every client's property requirements are unique. Activity within the local area that may affect commercial property include:

- ▼ Current business activity and confidence in the area
- ▼ Recent leasing evidence
- ▼ Council planning requirements
- ▼ Infrastructure and other developments nearby
- ▼ Presentation and positioning of your premises

To ensure we provide you with a great outcome, we follow an established preparation process as we have found this to be key to attracting quality tenants as soon as possible.

- ▼ **Our appointment** – we formalise our appointment with a standard REIV Authority.
- ▼ **Property preparation** – we ensure we are fully across all aspects of the property and a condition report is prepared.
- ▼ **Marketing program** – we prepare a communication plan with a considered strategy, designed to triggering quality enquiry.
- ▼ **Marketing campaign** – cost effective program, prepared, reviewed, approved and payment received.
- ▼ **Heads of Agreement (HOA) preparation** – outline all aspects of the basic terms of the lease being sought.
- ▼ **Leasing program commences**
- ▼ **Negotiation phase** – focus is on the Heads of Agreement document. Once all parties agree, lease documentation is prepared and executed.
- ▼ **Completion phase** – a tenant is not allowed access until lease documentation is signed by both parties and first month's rent and security bond are paid in full.
- ▼ **Management phase** – the property is then handed to our experienced management team to care for your asset.

What is an agency authority and why do I need to complete one?

We require formalisation of our role and appointment. The Estate Agents Act requires that any arrangement for the provision of Agency services must be in writing. As members of the REIV we work in accordance with an REIV Authority form which has been designed to meet the requirements of Estate Agents Act.

KEY LEASING ENQUIRIES

Why do I need a lease?

This is a contract between the landlord and the tenant. It sets out the obligations of each party. Whenever there is a query or dispute it is always the first document referred to.

Heads of agreement (HOA)

Our lease transactions involve the preparation of a HOA. This document summarises the basic terms and conditions which, upon agreement, is signed off by both parties. The HOA is then provided to the landlord's solicitor to prepare the lease documentation.

How do rent reviews work?

Normally there is a fixed or CPI annual increase during the lease term. However upon your lease renewal (if any) the rent is determined at market levels.

How is the rent determined?

The rent is determined by a market rent review of the area that the property is in. The rent is based on the comparable rents of other properties within the area that are of the same size and structure. The rent is ultimately determined by the owner on the basis of these facts and on the advice of the agent.

What is a disclosure statement?

The Disclosure Statement is a statement that is to be completed by the landlord under the Retail Leases Act 2003. The Disclosure Statement outlines aspects such as:

- ▼ The landlords details
- ▼ The tenants details
- ▼ The details of the premises
- ▼ The retail shopping centre (if applicable)
- ▼ The terms of the lease
- ▼ The permitted use of the premises
- ▼ The occupancy costs
- ▼ The rent payable
- ▼ The outgoing and what they are
- ▼ Tenants fit out and/or refurbishment works
- ▼ Relocation/demolition clause (if applicable)
- ▼ Additional representatives (if applicable)
- ▼ The declaration by the landlord or landlord's agent

Do all directors need to sign the heads of agreement (HOA) and lease?

If the ownership entity is under a company name then the directors of that company must sign the lease agreement.

What is the difference between net and gross rentals?

Net rentals are the most common way tenants are charged rental for the premises.

Net rentals are paid monthly, whilst outgoing are charged when they fall due. For details of types of outgoing see Frequently Asked Questions (FAQ) on this subject.

Gross rentals, on the other hand, cover all tenant obligations (outgoing) in a single charge.

Rent and all outgoing (excluding consumables) are combined together in a gross rental.

A landlord can advise their preferred lease setup.

What is a lease term?

This is the number of years the tenant agrees to lease your property. It is the "term certain" you are allowing the tenant to use the premises.

What is the minimum lease term allowed?

This will be determined by you as the landlord, however under the Retail Leases Act, the minimum lease term allowed is five years in total. This can come in the form of a 2 x 2 x 1 year lease or a 3 x 2 year lease as examples. Short term leases (eg. 12 month lease) are acceptable but a waiver needs to be obtained by the tenant and accepted by the Small Business Commissioner.

For further information look up www.vsbcc.vic.gov.au.

What is the retail leases act?

The Retail Leases Act was put into legislation in 2003 and was designed to enhance:

- a) The certainty and fairness of retail leasing arrangements between landlords and tenants; and
- b) The mechanisms available to resolve disputes concerning leases of retail premises.

In the Act, retail premises means a premises, not including any area intended for use as a residence, that under the terms of the lease relating to the premises are, or are to be used, wholly or predominantly for:

- ▼ The sale or hire of goods by retail or the retail provision of services.

Retail lease legislation applies to a retail premises lease used for the sale or hire of goods by retail or the retail provision of services and where the occupancy cost is less than \$1 million per year.

What is an option period?

After the initial lease term most leases provide for the tenant to extend their lease by a pre-determined period.

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Essential safety measures & fire safety

Under the Building Regulations 2006, owners are required to provide a premises that complies with the Essential Safety Measures legislation. Premises are inspected annually (some bi-annually) to ensure it remains compliant.

Compliance requirements are both the responsibility of the tenant i.e.: maintenance of clear walkways etc. and the owner i.e.: regular fire hydrant checks.

The tenant is required to pay for the cost of these inspections in accordance with lease obligations and amendments to the Retail Leases Act from October 2020.

Should the premises be found to be non-compliant then significant fines could be imposed upon either party responsible for not fulfilling its responsibilities.

Make good / reinstatement

Most leases state the premises, upon lease termination, must be in the same condition as the lease commencement (excluding fair wear and tear). If we manage your property we ensure the tenant is aware of their obligations and inspect the premises to ensure the lease has been complied with.

Can the tenant request to carry out works during their lease term?

Yes, however the details of the actual works including time frame and costs etc. need to be correctly stipulated, via a written request to the landlord, which can then either be accepted or declined by them.

Leasing a commercial and industrial property is different to leasing a residential property. Every client's property requirements are unique as is the legislation governing it.

UNDERSTANDING OUTGOINGS

What is an outgoing?

Outgoings are the expenses attributable to and necessary to maintain a functional property. Most commercial leases require the tenant to reimburse the property outgoings. These are paid by the tenant, in accordance with the lease terms, in addition to the agreed rental.

For a "gross lease" outgoings are included within the rental as a single payment. There are no further outgoings for the tenant to pay as they are settled by the owner of the property other than such things as phone, electricity and water consumption.

What do outgoings consist of?

Property charges such as:

- ▼ Statutory charges such as council rates, water rates, drainage charges
- ▼ Building operating costs
- ▼ Insurance costs
- ▼ Owners Corporation fees if a strata titled property
- ▼ Essential Safety Measures

Who pays land tax?

Under the Retail Leases Act, the owner is required to pay land tax on their premises. This is a non-recoverable expense however there are exceptions. For example only, if the tenant is a publically listed company or the lease obligations are over \$1 million per annum, land tax is recoverable from the tenant.

For properties not covered by the Retail Leases Act, land tax is recoverable from the tenant based on a single-holding basis.

What is an owners corporation fee and what does it include?

An Owners Corporation, formerly known as Body Corporate, manages the common property of a residential, commercial, retail, industrial or mixed-use property development.

It carries out the wishes of the collective owners, collects Owners Corporation outgoings and ensures the rules are adhered to.

The Owners Corporation will collect charges for utilities, cleaning, insurance etc. for the common areas and will charge a portion to each premises as defined by the deed of incorporation.

The Owners Corporation charges will in most cases be chargeable to the tenant as part of its lease obligations.

For further information refer to the Owners Corporation Act 2006 www.legislation.vic.gov.au.

What is included in insurance outgoings?

Outgoings, charged either by the Owners Corporation or by the landlord, include building insurance, public liability and plate glass.

Additionally, the tenant is required to take out their own contents insurance. For more specific information regarding insurance, contact your insurance provider.

LEASE SECURITY & GUARANTEES

What is the security bond?

This is a cash amount which is paid by the tenant and held in an interest bearing account as required under the Retail Leases Act to secure against non-performance of the lease obligations by the tenant. This will usually be around three months' rent inclusive of the GST or more subject to the level of security provided.

What is a bank guarantee?

A bank guarantee is an irrevocable undertaking by an Australian Bank to pay upon demand.

A bank guarantee can be provided as an alternative to a security deposit.

Why do we request a tenant references?

Credit references provide some indication to the owner and the agency, that the potential tenant is reliable, timely, honest and trustworthy with regards to the payment of invoices and bills.

The references could include, past landlord(s), regular business suppliers, audited financials and estate agents who they have leased premises from previously.

Director's guarantees

Director's guarantees are there to provide additional security by the tenant. In the event that the lease of a premises is under a company name and these are in place, then the directors who signed the lease are personally liable for the company performance under the lease.

GST PROVISIONS

Goods and services tax (GST)

Goods and Services Tax is added to charges relating to all commercial property. Once registered, GST can be claimed back as part of the quarterly BAS statement, depending on the business ownership and reporting structure. If you need specific information regarding GST on leased premises, speak to your accountant.

How is GST invoiced?

Nichols Crowder issues Tax Invoices and collects consideration plus GST from tenants on the behalf of the owners. Monthly statements are provided with the information necessary to complete BAS statements. Monthly statements also serve as a Tax Invoice and set out the management fees and GST levied and collected/deducted from the income collected.

What about the GST on outgoings?

Current tax law has a special interpretation of leases and considers that any amount which becomes payable according to the terms of an agreement (lease) is to be considered consideration for supply.

If under a lease a tenant is required to reimburse or pay an amount e.g. council rates, then as soon as that payment is made by the tenant, that amount paid is deemed to be consideration for supply.

As soon as payment becomes due by the tenant, under a lease it changes its nature under tax law interpretation. Accordingly technically, reimbursement of rates becomes "consideration of supply" and is legally indistinguishable from rent.

The tax law deems that the payment has been received by the landlord and 1/11th of the amount received is payable by the landlord as GST.

LEASING COSTS

Marketing

For our landlords we offer discounted marketing programs to assist with leasing the property as quickly as possible. We tailor programs to suit your property and review this together with you.

When is a leasing fee payable?

The leasing fee is payable immediately when the lease becomes unconditional. Nichols Crowder will issue a tax invoice and deduct this from initial rentals as they are collected.

What legal costs are involved in leasing a property?

As the landlord you will have a Lease and Disclosure Statement prepared by a solicitor. Each party is responsible for their own legal costs.