



Sale of Business & Transfer of Lease

If the sale of your business is the sale of a going concern, the sale will be conditional on the transfer of your existing Retail Lease or the procurement of a new Lease.

The sale will be subject to your obtaining a transfer of the Lease to the Purchaser and consent to the Transfer of Lease by the Landlord (and its mortgagee if applicable).

Landlord's Consent

You are not required to communicate with the Landlord until after a Contract of Sale has been signed and a deposit paid.

In attempting to sell your business you will be required to provide to the business broker and/or Purchaser:-

- A copy of your current Lease and any Renewals;
- A copy of your Disclosure Statement which was given to you by the Landlord;
- A list of any changes that you are aware of, eg, a change in rent; a change in outgoing listed; and any other change in the Premises or Centre.

Your Lease and S.60(1)(a) of the Retail Leases Act (RLA) will require you to provide the proposed Assignee with business records for the business for three years or such other lesser period of your trading. If this is not done, the Landlord can refuse to consent to the assignment of the Lease.

The Lease and the RLA provide that if the premises will be used for an ongoing business, you must provide the Landlord and the New Tenant with a current Disclosure Statement.

The regulations to the RLA changed on 1 January 2011 and a new form of Disclosure Statement has been prescribed. Accordingly, a new Disclosure Statement will, in most instances, have to be prepared.

Your Lease and S.61(5) of the RLA provide that you can request the Landlord to provide a current Statement to you. The Landlord must comply with the request within 14 days.

Provided you have attended to the above, you can now make a written request for consent. This request will be made after you receive a signed Contract and deposit. The Sale Contract will be conditional on you procuring the Landlord's consent to the Transfer of Lease.

At the time of requesting the Landlord's consent, you will need to provide the Landlord with such information as the Landlord requires about the business experience and financial resources of the proposed Assignee. These will include:-

- Asset & Liability Statement of the Assignee to reflect solvency;
- Character & Business References to endorse respectability and responsibility;
- Previous Landlord's and Supplier References; and
- Statement of Business Experience.

Your Lease and the RLA provides that the Landlord must give its consent unless:-

- (a) The new tenant proposes to use the premises for a purpose which is not permitted under the Lease; or
- (b) the Landlord considers that the new tenant does not have sufficient financial resources or business experience to meet the obligations under the Lease; or
- (c) you have not complied with your obligations under the Lease in respect of the Transfer of Lease provisions; or
- (d) you are in breach of the Lease and have not remedied the breach.

In giving consent, the Landlord may request additional security, such as an increase in the security deposit if the New Tenant's financial position or experience do not meet the Landlord's requirements.

Landlord's Costs

The costs of obtaining the Landlord's consent (including Landlord's Solicitors costs and agent's costs) to the assignment and the costs of investigating the Tenant's suitability are unless otherwise negotiated, usually paid by the Outgoing Tenant.

Release from Guarantors

Your compliance with your Lease and the RLA will have the effect of releasing your Company and you personally (if you have given a personal guarantee) under S.61(5A) of the RLA from your personal guarantee to observe the terms of your Lease.

The Landlord will accordingly not be able to look to you and your Company should the New Tenant as Assignee fail to comply with the Lease obligations after the Transfer of the Lease.

Contact: Pearce Webster Dugdales, Level 4, 379 Collins Street, Melbourne.