



UNDERSTANDING YOUR BUSINESS

LEASE

By Brendon Falk

Whether you are buying or selling a business with a lease in place or providing the buyer with a new lease, it pays to understand the terms of a standard lease and why it is so important to the sale of a business. When selling your business, you need to provide the buyer with everything that is necessary to carry on the business in order to qualify for the GST Going Concern exemption. Therefore, the lease is fundamental to the business continuing and therefore must be provided. Whether you have an existing lease to assign or the lessor provides a new lease offer, the buyer has the right to know exactly what they are getting. That is why in Queensland, under the *Retail Shop Leases Act 1994*, the landlord is required to provide the prospective tenant / lessee with a statutory Disclosure Statement at least 7 days prior to entering into a lease. This disclosure outlines the general terms of the lease to be entered into.

A business sale contract discloses the terms of the existing or new lease on offer. It is also customary for the business sale contract to contain provision for the buyer or buyer's solicitor to be satisfied with the terms of the lease, otherwise the contract will be at an end. The lease preparation costs, in the event of a new lease, will also be assigned to a party. It is customary for these costs to be assigned to the seller (if landlord or assignor). In the event of a new lease that is governed by the *Retail Shop Leases Act 1994*, the cost will be assigned to the landlord and cannot be passed on. However, the landlord can ask for reimbursement of assignment or sub-lease costs.

Lease particulars can be quite complex and will depend on factors such as the location, type of lease and permitted use of the tenancy. However, most leases have the same components which determine the attractiveness of the lease and the security it provides the potential buyer or lessee / tenant. The following items should concern all buyers and sellers as they will arise during the course of a business sale that involves a lease:-

Rent - This is the net amount payable on a monthly basis plus GST plus Outgoings.

Outgoings - Include rates, land taxes, cleaning, air conditioning maintenance, security and other shared costs that are apportioned to each tenancy on a pro-rata m² basis. This is charged periodically which the tenant is required to pay. However, tenants will only pay expenses and not capital costs or interest on loans. Legal costs for drawing up new leases or disclosures cannot be passed on either.

Net Lettable Area (NLA) - Is the amount or floor area that the tenancy occupies. It is referred in m².

Term - This is a fixed term usually in years which will commence on a specified date and run for a period of time.

Option(s) - Are a fixed term or number of additional terms that provide for the lease to be renewed or extended. If the option is not taken up during the option time frame, the right is lost. However, the landlord is required to provide written notice to the tenant as to whether they intend to offer a new lease.

Rental Review - The lease and the lease disclosure will state when is the rent reviewable and by what method. The review types in (i) Market Review, (ii) movements in CPI / inflation and (iii) Fixed %.

Bond - Is the security deposit required by the landlord. This varies from 2 to 3 months rent and be left in a lawyers trust account or can be paid by bank guarantee.

Registration - If the term is greater than 3 years, the lease must be registered with DNRW (Titles Registration). This means if the property is sold, the tenant is afforded protection under a registered lease.

Hopefully this will have given you a good understanding of lease fundamentals and which components are important when it comes to selling or buying a business. A well secured lease with a reasonable market based rent and a fair rental review method will add considerable value and appeal to your business.

Should you require any further information or assistance on this topic, I invite you to contact me on my landline (07) 4124 4677, my mobile 0412 311 803 or by email bfalk@foresightbusiness.com.au.

Brendon Falk MBA MFP
Director and Business Broker
Foresight Business Sales Australia Pty Ltd