



Landlord's Practitioner Checklist

This is not a comprehensive checklist but working through it will help you avoid the most common mistakes made in lease transactions.

Preliminary

- Search the title to check the landlord's name and see whether the property **is mortgaged**.

- Where the landlord or tenant is a company, conduct a company search to check the company is registered, its correct name and the **identity of all directors**.

- Exchange letters** between the parties confirming what has been agreed. Let your client confirm the contents before sending.

- Consider whether the premises are retail premises as defined by the Retail Leases Act 2003 (Vic).

The Lease

- Consider the need to attach a plan to the lease identifying the premises and any accessory lots such as car spaces.

- Have the client confirm the area of the premises and compare this to the area on any plan.

- Double check any plan to ensure the correct plan has been attached to the lease. This should be done as close to the execution of the lease as possible.

- Be careful when using precedent lease documents, lease documents from other files or previous lease documents for the same premises. Consider whether there are any unusual special conditions which should not be included in the new lease.

- Ensure special one-off terms contained in the original lease are not inadvertently drawn into further terms of the lease. Option clauses should specifically exclude the first term only conditions from future leases.

CHECKLIST

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Check any cross-referencing remains valid where a lease is amended.

Get someone other than the person who drafted the lease to check that the figures convey the meaning intended by both parties as well as check the percentages and formulae.

Rent

Ensure you obtain specific instructions from the client as to how the rent is to be determined and/or adjusted for each and every year of each and every term, not just the first term.

Consider including a table in the schedule to the lease setting out the rent payable over the whole period of the lease.

Ensure the method of **rent review** is clear and unambiguous, including who may trigger it.

- Is the date of review clear?
 - Does it make sense, taking into account option periods?
 - Have test calculations been run through the rent review formula?
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If the Retail Leases Act applies, do the rent review provisions comply with the Act?

Outgoings and land tax

Ensure you receive specific instructions about the outgoings payable, make sure the lease expressly refers to the applicable outgoings and whether they are payable by the tenant or landlord.

Check the liability for **all outgoings** has been accounted for. Have owners corporation charges been dealt with?

Where the [Retail Leases Act 2003 \(Vic\)](#) (the Retail Leases Act) applies:

- in accordance with [section 39](#), specify:
 - the outgoings that are recoverable
 - how the outgoings will be determined and apportioned (ensure the method is consistent with the [Retail Leases Regulations 2013](#) (the Regulations))
 - how the outgoings are to be recovered.



- make the lease definition of outgoings conform to the definition in the Act: [section 3](#)
- exclude recovery of prohibited items such as undisclosed fit-out costs, capital costs, depreciation, contribution to sinking funds, interest on borrowings, head lease rents and land tax: sections [20](#), [41-45](#) and [50](#)
- adopt the correct method of apportionment by multiplying the total amount of the outgoing by the relevant fraction as set out in the Regulations: [regulation 9](#)
- be conscious of the limitations on recovery of management fees: [section 49](#)
- ensure the provisions concerning statements of estimated and actual outgoings conform to sections [46](#), [47](#) and [48](#)
- be aware that for premises located within shopping centres, operating expenses need to benefit a tenant's premises before the tenant may be required to contribute: [section 40](#)
- In non-retail leases check whether the **land tax** is recoverable from the tenant and if so, on what basis it is going to be calculated. Usually this is on a single holding basis.

Other Retail Lease Act requirements

- Do the following provisions conform to the Act?
- landlord's **repair obligations**
 - **relocation** and other interferences provisions
 - **abatement**
 - **termination**

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- Check that **refurbishment and re-fitting provisions** specify the nature, extent and timing.

Directors guarantees

- Advise the landlord client to obtain **directors' guarantees** where the tenant is a company.

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- Check the guarantees have been **properly executed**.

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- When acting on a renewal of lease consider whether there has been an **alteration to the terms** of the lease requiring a fresh consent from the mortgagee or fresh guarantees from the directors of the tenant company.



GST

- Include appropriate GST provisions.
 - State whether the consideration is inclusive or exclusive of GST.
 - Pass on the GST (if consideration is GST-exclusive) to the tenant.
 - Prevent the charging of GST component of outgoings.

General

- Check the version of the **lease to be executed** reflects the agreed terms and the client's instructions.
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- Send a copy of the signed lease to the tenant
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- Document all attendances and meetings with your client and others.
Your file notes should:
 - be dated
 - identify the author
 - record the duration of the attendance
 - record who was present or on the telephone
 - be legible to you and someone else
 - record the substance of advice given and the client's response/ instructions
 - be a note to the file rather than a note to self.

Security deposits

- If a security deposit or **bank guarantee** is to be provided, diarise to obtain it within the time specified in the lease.
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- Check that any security deposit has been lodged in an interest-bearing account.
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- For Retail Lease Act leases, be aware of the landlord's obligation to return security deposits within 30 days of the end of the lease if the tenant has performed their obligations under the lease.



Options

- Advise the landlord client in writing of the need to notify the tenant of the **last date for exercising the option** or the landlord's intentions where there is no option. Ensure the landlord client is aware you will not be responsible for reminding the client of the time to serve the notice.

- For Retail Act leases containing an option to renew, advise your landlord client of the landlord's obligation to provide tenants with a written notice setting out the following information at least 3 months before the last date for exercising the option:
 - the last date for the exercise of an option to renew
 - the rent payable for the first 12 months under any renewed term of the lease
 - the availability of an early rent review under section 28A
 - the availability of a cooling off period under section 28B if the tenant has exercised an option to renew but has not requested an early rent review
 - any changes to the most recent disclosure statement provided to the tenant.

Disclosure for new Retail Leases Act leases

- Disclosure for new Retail Leases Act leases Check that a copy of the lease and information brochure has been provided to the prospective tenant.

- Check that the disclosure statement and copy of the lease including particulars of the tenant, the rent and term were provided to the tenant at least 14 days before commencement of the lease.

- Check the lease commencement date as prescribed under the Retail Leases Act. Irrespective of the date stipulated in the lease, the lease will commence 14 days after the proposed lease and disclosure statement has been provided to the tenant (section 17 (1C)).

- Has the correct disclosure statement been provided?
 - [Schedule 1](#) is the form to be used where retail premises are not located in a shopping centre.
 - [Schedule 2](#) is the form to be used where retail premises are located in a shopping centre.
 - [Schedule 3](#) is the form to be used on renewal of lease.
 - [Schedule 4](#) is the form to be used where a lease is being assigned and where there is an ongoing business.



- Check the tenant has been notified in writing of any changes made to the lease (section 17(1B)).

Disclosure for renewal of Retail Leases Act leases

- Check that the disclosure statement provided to a tenant on renewal of a retail lease sets out any changes made to the previous disclosure statement provided to the tenant.

Default and re-entry

- Take care when preparing and serving a notice of default and/or re-entry to ensure strict compliance with the requirements as set out in the lease and any applicable statutory requirements, for example [sections 146](#) and [198](#) of the Property Law Act 1958.

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- Ensure any notice to quit is either dated and served the same day or undated with the time in which to vacate calculated from the date of service.