



Tenant'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**.
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- Where the tenant or landlord is a company, conduct a company search to check the company is registered, its correct name and the **identity of all directors**.
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- Exchange letters** between the parties confirming what has been agreed. Let your client confirm the contents before sending.
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- Consider whether the premises are **retail premises** as defined by the Retail Leases Act 2003 (Vic).
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- Consider whether the intended use is permitted or prohibited under the relevant planning scheme.
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- Advise the tenant that they need to consider what due diligence they will undertake. For example, that the tenant needs to ascertain what permits and/or consents are required for their intended use.

Mortgagee's consent

- Warn the tenant of **the need to obtain the landlord mortgagee's consent** before entering a new lease, an assignment or other dealing affecting the lease.
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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. If so, ensure this is obtained.
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- Carefully check whether there are any qualifications contained in the form of consent such as consent may only be operative as long as the tenant is not in default under the lease.



- Consider if an amendment to the form of consent is necessary to properly protect the tenant.
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- Where the mortgagee refuses to provide formal written consent before the lease is executed, ask for a 'specimen of consent' – a draft or proposed consent the mortgagee intends to give. This allows the proposed tenant to see the terms of the consent and puts the mortgagee on notice of the proposed tenant's interest.

Assignments - When acting for the incoming tenant

- If acting in a purchase of business, make it a requirement of the purchase that an **assignment of lease** has been obtained before the tenant client enters possession.
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- Advise a tenant client in writing of the risks of taking possession without an assignment of lease.
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- Carefully check the terms of the assignment and explain them to your client.
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- Confirm which party is to be responsible for the legal costs relating to the assignment and any managing agent's costs.

Assignments - When acting for the outgoing tenant

- Provide the assignee with the disclosure statement previously given to the tenant and any changes the tenant should be aware of regarding the lease or request an updated version from the landlord: [section 61\(3\)](#).
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- In the case of an ongoing business, also give the landlord and the proposed assignee the disclosure statement required by [section 61\(5A\)](#).
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- Check for any unusual clauses in the lease or any previous deed of assignment restricting the right to assign.
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- Confirm which party is to be responsible for the legal costs relating to the assignment and any managing agent's costs.



General

- 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 on a single holding basis.

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

- 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.

- Highlight to the client any unusual rent provisions.

- Include **appropriate** GST provisions, that:
 - entitle the tenant to a tax invoice at the time of payment
 - make the GST treatment reciprocal.

- Check the version of the **lease to be executed** reflects the agreed terms and the client's instructions.

- Advise the tenant client in writing of the need to **exercise any options** and exactly how to go about it. Ensure the tenant client is aware you will not be responsible for reminding the client of the time for exercise.

- Document all attendances and meetings with your client and others. Your file notes should:
 - 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.



If the Retail Leases Act 2003 (Vic) applies

- Check that a copy of the lease and **information brochure** has been provided to your client as the prospective tenant.

- Has an adequate disclosure statement been provided?

- Check that the disclosure statement and a copy of the lease containing details of the tenant, the proposed rent and term of the lease were provided to your client at least 14 days before the start of the lease. The lease will not commence until 14 days after this documentation is provided.

- Check that your client has been provided with details of any changes made to the previous copy of the lease given to them,

- Do the provisions concerning statements of estimated and actual outgoings conform to the Act?

- Do the following provisions conform to the Act?
 - abatement
 - termination
 - rent review.

- Check the liability for all **outgoings** has been accounted for.
 - Does the lease definition conform to the Act?
 - Have prohibited items been excluded?
 - Has the correct method of apportionment been adopted?
 - Do the landlord's repair obligations conform to the Act?
 - Do the relocation and other interferences provisions comply with the Act?

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

- For leases which provide an option to renew, advise tenant clients as to:
 - the availability of early rent reviews under [section 28A](#); and
 - cooling off rights available under section 28B
 - where the tenant has exercised an option to renew a lease but has not requested an early rent review.