Introduction

This 2014 edition of *Looking after leases* contains some recent claims, relevant cases and changes to legislation affecting retail leases. It is designed to raise your awareness of common problems in commercial and retail lease transactions, and help you protect your practice against claims.

From 2010 to 2013 claims relating to commercial and retail leases accounted for approximately six per cent of the total number and approximately three per cent of the total cost of claims.

The two most common causes for lease claims are simple oversight and problems arising from failure to manage the engagement.

Residential leases, crown leases, caravan park site agreements and retirement village leases are outside the scope of this guide.

To discuss any concerns you have when acting in a lease matter contact LPLC on (03) 9672 3800. While we are unable to provide legal advice, we can discuss danger areas, how claims may arise and direct you to relevant resources.
The best risk management

The best risk management for leases is to use the checklist at the back of this guide.

There are several other steps practitioners should take when dealing with leases.

1. Ensure letters setting out the basic terms and conditions agreed are exchanged between the practitioners for the parties. Your client should see and confirm the content of your letters before they are sent. If there has been a misunderstanding between the parties, it can often be detected and resolved at this early stage.

   If a drafting error does occur in the lease there is a prospect of having it rectified to accord with what was agreed in the correspondence. A written record, even a basic one, of what the parties have agreed has proved valuable to LPLC on many occasions.

2. Carefully check the version of the lease to be executed reflects the agreement between the parties and the client’s instructions. Attention to detail in this area of law is essential.

3. Careful retainer management is crucial where the client’s proposed course of conduct is commercially risky. If the client is determined to proceed, ensure they are fully informed about the risks they face and confirm that advice in writing. In some circumstances it may be necessary to recommend the client obtain accounting and financial advice, and even valuation advice. For example, where a client is buying real estate subject to a lease, they may wish to know if the rent being paid by the tenant is a market rent as this may influence their decision to purchase the property.
The problem areas

1. Drafting errors and omissions

Attention to detail is crucial when drafting leases.

Claims continue to be caused by a failure to check that the lease about to be executed reflects the parties’ agreement, the client’s instructions and the drafters’ intentions.

Renewals and sub-leases are particularly vulnerable where the original lease is used as a precedent but new terms have been negotiated.

The most common drafting errors in commercial documents occur in definitions, formulae and schedules. Leases are no exception.

Examples of where practitioners get sued are:

> a party is incorrectly identified, for example the lease refers to a party as the landlord but this party is not the registered proprietor
> the premises are not properly identified
> the lease does not include clearly worded special conditions setting out any terms of the lease which only apply during the first term and do not apply during any further term
> the terms of the lease do not match with the terms of the offer to lease.

**EXAMPLES:**

**Wrong party named**

As a leasehold interest is a legal estate, the grant needs to be made by the party entitled to the legal estate, namely the registered proprietor. We have seen claims where the landlord’s practitioner used the wrong name for the landlord in the lease. The practitioner failed to do a title search of the property to confirm the correct name of the landlord. The problem for the tenant arose when the property was sold. The new owner wanted to redevelop the property and could argue the lease was not valid.

**Lease plans**

Claims have arisen where:

> the plan attached to the sub-lease was not identical to the one attached to the head lease and as a consequences, the sub-tenant claimed the sub-lease was defective
> the practitioner failed to obtain an up-to-date plan and ensure the correct area of the premises corresponding with the parties’ intentions was leased
Looking after leases

The problem areas

> the description of the premises included a car park but should have been limited to a specified area within the car park. A dispute arose where another party claimed they had a lease of the same area. This error may have been avoided if a plan had been attached to both leases identifying the ‘premises’.

Mere licence

In a number of cases the landlord purported to include in the lease an area that was held by the landlord under a mere licence (typically, outdoor dining or drinking areas). Misunderstood rights to the leased area can trigger costly disputes where the disputed area is integral to the value of the business. In some cases the problem is detected only when the tenant attempts to assign the lease. The legal basis of the landlord’s entitlement must be ascertained and correctly described in the lease.

Rent error

A practitioner acting for a landlord on the renewal of a lease inserted the rent amount for the current term in the schedule to the lease for the new term rather than inserting the market rent amount for the new term. The lease for the new term and a retail lease disclosure statement were given to the tenant. The disclosure statement included the correct amount for the new term which assisted in having the lease rectified.

Rent-free period carried over

We have seen a number of cases with the rent-free period offered at the outset of the lease unwittingly carried over into a further term. This can happen where the option is stated to be on the same terms as the original lease.

Consequential changes

Cross references within a lease to a non-existent clause or to the wrong clause can have catastrophic results for the interpretation of the lease. In one claim, an additional clause added very late in the negotiations changed the numbering of clauses. This affected a cross reference within another clause, resulting in a changed rent review clause with dire results for the landlord.

Maths not right

It is common for rental disputes to arise from incorrect calculations or figures in lease documents. This can be as simple as the wrong dollar amount inserted or more complex mistakes such as untested mathematical formulae. LPLC has seen cases where a complicated formula for calculating rent was effective for the first years of the lease but had unintended results when applied post-renewal. Testing calculations will usually prevent this kind of error being introduced into the lease.
The language of obligation

In one claim there was an understanding between landlord and commercial tenant that the landlord would undertake an upgrade of lifts in the leased premises. This was not couched in sufficiently clear terms in the lease to create a positive obligation, enforceable by the tenant.

In another claim a third party’s rights of access to the tenanted land was expressed in ambiguous terms, generating a dispute about the kind of access contemplated by the wording of the lease.

OUTGOINGS

In claims concerning leases, a common error is the omission of outgoings such as owners’ corporation fees. One claim arose where the practitioner incorrectly excluded insurance from the list of outgoings payable by the tenant. In another claim, a drafting error resulted in an obligation being imposed on the landlord to pay for security at the premises. This obligation should have been imposed on the tenant.

Our recommendations

- Obtain a title search to identify the landlord.
- Consider the need to attach a plan to the lease identifying the premises and any accessory lots such as car spaces.
- Double check any rent amounts and/or calculations.
- 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 or one-off terms contained in the original lease are not inadvertently drawn into further terms of the lease. An example is where the landlord assumes extra obligations during the initial term of a lease such as to cover fit-out costs or providing a rent-free period. Ensure these are not inadvertently carried into future terms.
- Check any cross-referencing remains valid where a lease is amended.
- 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.
Where the Retail Leases Act 2003 (Vic) (the RL 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)) and
  » 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
☑ make sure you are using the correct form of disclosure statement in accordance with the Regulations.

Refer to part 7 and Appendix One for further details about retail leases.
2. Options

Missed and misunderstood dates for the tenant to exercise an option are another source of claims.

A missed opportunity to exercise an option can be an expensive oversight with major financial implications for a tenant forced to relocate its business.

FAILURE TO EXERCISE AN OPTION

These claims continue to occur mainly as a result of oversight or poor engagement management.

Typically, a lease requires the tenant to exercise an option for a further term in writing and within a specified period of time. Claims can arise from a number of circumstances including when:

> the client telephones the practitioner shortly before the period is to expire for exercising the option and the practitioner either fails to act at all or fails to ensure the notice is dispatched within the required period
> the client claims not to have been advised of the cut-off date for exercising the option or the necessary steps to be taken
> the client alleges the practitioner undertook to contact the client for instructions prior to the option expiring but failed to do so
> the option is exercised but not in the manner prescribed by the lease.

**EXAMPLES:**

**Landlord’s office moved**

The lease required the current option be exercised in writing and sent to the registered office of the landlord. The landlord’s registered office had changed and the letter was sent to the old address close to the deadline. The landlord subsequently declined to accept the late notice.

**Notice to wrong party**

The lease required notice to be given to the landlord but notice was purported to be given to the practitioner who acted for the landlord at the time the lease was entered into.

**Sub-lease versus head lease**

When acting for a sub-tenant, the sub-lease prepared did not impose an obligation on a sub-lessee to exercise an option for the head lease thus rendering any option available to the sub-tenant useless.
CASE TO NOTE

It is worth noting the Supreme Court decision relating to the notification provisions in section 28 of the RL Act in the case of Xiao v Perpetual Trustee Company Ltd & Anor [2008] VSC 412.

The court interpreted section 28 (1) very strictly to require physical supply of the notice and ‘evidence that it is actually provided and received’. In practical terms this is akin to personal service. If your landlord client chooses to put the issue of notification beyond doubt, they may opt to pay for the notice to be personally served.

A landlord does not have to give notice if the tenant has exercised or purported to exercise the option before receiving the notice.

In cases where there is no option to renew, section 64 of the RL Act requires that notice of the landlord’s intentions concerning renewal be given **not more than 12 months nor less than six months** before the lease term ends:

> offering the tenant renewal on specified terms or
> informing the tenant that renewal will not be offered.

Failure to give notice has consequences similar to the consequences that flow from a failure to give notice under section 28 – the term of the lease continues.

DISCLOSURE ON RENEWAL

Under the RL Act disclosure on renewal is required **at least 21 days** before the term ends in the case of an option for renewal and **within 14 days** after agreement to renew where there is no option: section 26(1).

The prescribed form of disclosure of renewal is as contained in schedule 3 of the Regulations.
Our recommendations

☑ When sending the signed lease to the tenant, advise the tenant:
  » the time for exercising the option
  » the consequences of failing to exercise in time
  » that the practitioner accepts no responsibility for reminding the client to exercise the option in time and the tenant must set up its own internal reminder system.

☑ Where a client is exercising an option to renew a lease, obtain a fresh consent from the mortgagee.

☑ Where the RL Act applies, be aware of the obligation on the landlord to notify the tenant of the last date for the exercise of an option to renew not more than 12 months nor less than six months before the last date for the exercise of the option. See section 28 of the RL Act.

☑ Inform any landlord client that the practitioner accepts no responsibility for reminding the client of the time to send any notice required to be sent by the landlord to the tenant. The landlord will need to set up its own internal reminder system and/or instruct the landlord’s managing agent to perform this task. This could be included as a clause in the agreement appointing the managing agent.

☑ Check for any unusual clauses in the lease relating to options and advise the client accordingly. For example, the lease may contain a ‘put and call’ option and both the landlord and tenant will want to know the date by which the option must be exercised.

Refer to part 7 and Appendix One for further details about retail leases.
3. Rent review

Claims concerning rent review typically involve a failure by the practitioner to:

> clearly advise who is entitled to trigger the rent review clause and when
> properly document the rent review formula for the term and for any option(s).

Mathematical mistakes are often made in rent review clauses.

**RETAIL LEASES**

The statutory regulation of rent review clauses under the RL Act and its predecessors* has been a perennial source of claims.

In the past, claims arose because of threshold failures – practitioners failing to appreciate the client’s premises were retail premises and therefore preparing a void rent review clause.

Practitioners are now better at identifying retail premises and determining when the RL Act applies, but still slip up with clauses that are ambiguous or breach the rules governing rent review in the RL Act.

The RL Act prohibits clauses that purport to say the rent review must exceed or be not less than the rent payable before the review, known as an underpinning or ratchet clause.

Section 35 of the RL Act provides that only one of the following rent review options may be used at any one time:

> a fixed percentage
> an independently published index of prices or wages
> a fixed annual amount
> the current market rent of the retail premises or
> another basis or formula prescribed by the regulations.

Section 35(3) provides that any review clause other than types in the first three options above is void to the extent that it attempts to limit or prevent a reduction in rent.

* Prior to the Retail Leases Act 2003 (Vic) under the Retail Tenancies Act 1986 (Vic) and the Retail Tenancies Reform Act 1998 (Vic).

**COMMERCIAL LEASES**

Practitioners should be aware that since 2007 the Law Institute of Victoria copyright lease no longer has an underpinning clause. This means there is no ‘floor’ in the current standard form so rent may fall. There is no prohibition on ‘floor’ or ‘ratchet’ clauses in commercial leases so you should always address the issue of underpinning with your landlord clients.
TRAPS WHEN SETTING MARKET RENT

Some leases have clauses that deem a tenant to have accepted the market rent amount offered by the landlord. This sort of clause usually obliges the tenant to give written notice objecting to the amount offered by the landlord, within a certain period, say 14 days.

The practice of ‘deeming’ a tenant to have accepted (and therefore agreed to) the landlord’s market rent figure was considered and rejected in Figgins Holdings Pty Ltd v Williamson Place Pty Ltd [2010] VCAT 243.

This means the process outlined in section 37 of the RL Act must be followed where there is no ‘agreement’ between the landlord and tenant, and the rent is to be determined by a specialist retail valuer. The valuer to be appointed is by agreement, or failing agreement, as appointed by the Small Business Commissioner.

AUTOMATIC MARKET RENT REVIEW AND THE LIV LEASE

This case is a good example of how problems may arise where the lease does not specify how the rent is to be determined for each further term.

The application of a market rent review process in clause 11 was considered in the case of Dagles Trading Pty Ltd v Skamper Pty Ltd (Retail Tenancies) [2006] VCAT 1220.

Clause 12.2.2 of the Law Institute of Victoria copyright lease of real estate specifies that the renewed lease has a starting rent determined in accordance with clause 11. Clause 11 specifies a market rent review process.

Our recommendations

☑ 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.

☑ 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.

Refer to part 7 and Appendix One for further details about retail leases.
4. Assignments

Many issues need to be fully considered by practitioners acting for a party involved in an assignment of a lease. For example, the terms of the transfer or assignment of lease documents needs to be reviewed and the client advised on any amendments that may be necessary to properly protect them. There are disclosure obligations which need to be met and disputes sometimes arise as to which party is liable to pay the landlord’s and managing agent’s costs.

Claims have arisen where:

- the client has not been fully informed about amendments made to the lease pursuant to the terms of the deed of assignment
- the deed of assignment was not properly executed
- the client was not informed about the difficulties of obtaining an assignment of lease where the existing tenant was in default
- the client has purchased a business and entered into possession without first obtaining an assignment of the lease of the premises. Sometimes, clients are so keen to enter into the business they are not prepared to wait for the assignment of a lease to be finalised as it seems to be a minor formality. The issue is also covered in the companion LPLC practice risk guide Small Business – Big Risks.

**EXAMPLES:**

**Business without a lease**

The contract of sale was for chattels of the business and not the goodwill. Settlement was initially delayed because no assignment of lease was provided. The tenant’s practitioner advised the client not to enter into possession of the business until an assignment of lease or a fresh lease was obtained. The practitioner did not confirm the advice in writing or keep file notes of the conversations.

The client insisted upon entering into possession and the practitioner therefore prepared a management agreement. The client soon found that the business was not profitable and attempted to sell it. The client then blamed the practitioner because he was unable to sell the business without a lease.

**Problems with the original lease**

The purchase of a business was conditional upon obtaining an assignment of a lease. There was a problem with the original lease that resulted in delays in obtaining the assignment. The delays were so long that the business was being run down. The client blamed the practitioner for not having picked up the problem with the original lease.
Variations not taken into account

Acting for a shopping centre tenant, the practitioner was involved in negotiating variations to the exclusivity and ‘permitted use’ terms of a retail lease following an argument with another tenant. The practitioner went on to act for the same tenant in an assignment of the lease but failed to disclose the variations. The practitioner had not searched or reviewed any related files for anything in the recent history of this lease relevant to the assignment.

In another claim, the practitioner acted for a new tenant in relation to an assignment of a lease. A clause was included in the assignment altering the relocation and demolition clause in the lease. The original lease provided that the tenant would be offered alternative premises in the event of a refurbishment. Pursuant to the assignment, this clause was amended so the lease could be terminated without an offer being made for alternative premises. The client alleged that he was not advised about the variation to this clause.

ASSIGNMENT UNDER RETAIL LEASES ACT

When a lease is being assigned to a company, it is important to ensure the landlord obtains a guarantee from the assignee’s directors.

Disclosure

The assignor tenant must discharge various disclosure obligations under section 61(3) of the RL Act. This involves giving the proposed assignee a copy of the disclosure statement originally given to the tenant together with any changes to the relevant information the tenant ought to be made aware. This may involve requiring the landlord to provide an updated disclosure statement for this purpose: section 61(5).

If the assignment relates to premises to be used for an on-going business, the tenant must also give both the landlord and the proposed assignee a disclosure statement (section 61(5A)) as set out in schedule 4 of the Regulations.

Providing the disclosure statement before the assignment will release the tenant and its guarantors from liability in respect of amounts payable by the proposed assignee under the lease so long as the statement does not contain information that it false, misleading or materially incomplete: section 62.

CASE TO NOTE

Section 60 of the RL Act was considered in the case of AAMR Hospitality Group Pty Ltd v Goodpar Pty Ltd [2009] VCAT 2782. VCAT held that the words ‘acting reasonably’ were to be implied in section 60(1)(b) so when considering whether to consent to an assignment of a lease, the landlord must act ‘reasonably’.
Looking after leases

The problem areas

Our recommendations

☐ When acting for the departing tenant:
  » request the landlords’ consent to an assignment: section 61(2)
  » 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)
  » in the case of an ongoing business, also give the landlord and the proposed assignee the disclosure statement required by section 61(5A).

☐ When acting for the incoming tenant:
  » explain to the client the consequences of settling on the purchase of a business without an assignment of lease
  » carefully check the terms of the assignment and explain them to your client.

☐ When acting for the landlord:
  » ensure any transfer/assignment of lease document properly protects the landlord and is executed by all parties
  » where applicable alert the landlord to the need to obtain consent from any mortgagee.

Regardless of which party the practitioner is acting for, they should seek instructions as to which party is to be responsible for the legal costs relating to the assignment and any managing agent’s costs.

Refer to part 7 and Appendix One for further details about retail leases.
5. Directors’ guarantees

Where a tenant is a company, directors’ guarantees can protect the landlord’s position so in the event of a default, the client can look further than a two-dollar company for recovery.

Practitioners should be aware of the range of possible errors concerning directors’ guarantees.

> Failing to advise the landlord client of the desirability of obtaining the guarantees.
> Forgetting to obtain the guarantees at all, having never prepared them.
> Preparing the guarantees, sending them out to the tenant or the tenant’s practitioners but never receiving the executed guarantees back. Remember, the tenant’s practitioner is going to be the last person to remind you that you have not got them back.
> Sighting the directors’ signatures next to the company seal on the lease and believing that the guarantees have been executed.
> Overlooking the need to obtain fresh guarantees on the exercise of an option under an existing lease.

**THE LIV LEASE AND DIRECTORS’ GUARANTEES**

Clause 15.2.2 of the Law Institute of Victoria copyright lease states that the liability of the guarantor is not affected by the failure of any guarantor to sign ‘this document’. This seems to be intended to address the situation where two or more persons are named as guarantor but not all of them sign, with the result that only those who do sign are liable.

The execution page states that the guarantor agrees to be bound by the guarantor’s obligations set out in the lease. However, the execution page does not contain any sub-heading providing for execution by the guarantor. Provision must be made for execution by all named as guarantor.

It is essential that the guarantor sign specifically in his or her capacity as guarantor. Clause 15.2.2 would not render the guarantee enforceable against a guarantor who has not signed.

**Our recommendations**

✔ Practitioners discuss with their landlord client the need to obtain some form of security in support of the tenant’s obligations pursuant to the lease. For example, personal guarantees and/or a security deposit/bond by way of cash and/or a bank guarantee.

✔ When a lease is being assigned to a company the practitioner explains to the landlord client the importance of obtaining a personal guarantee from the assignee’s directors.
6. Mortgagee’s consent

Claims arising from the failure to obtain the mortgagee’s consent appear to be linked to the economic cycle and tend to arise more frequently during economic downturns.

The consequences are disastrous for a tenant client when the bank moves in to take possession of the premises, leaving the client with no premises and a business of little or no value.

Practitioners must warn their tenant clients of the need to obtain the mortgagee’s consent.

Claims arise for a range of reasons.

> Some practitioners are simply unaware of the need to get the mortgagee’s consent. They have experienced no problems in the past because the economy was buoyant and the clients’ landlords remained solvent.

> Some practitioners accept the landlord’s word that there is no mortgage when a title search would have revealed otherwise.

> A practitioner can become distracted by other aspects of the transaction and, while the mortgagee may have been in communication with the tenant’s practitioner, or even be aware that the tenant intends to take a lease of the premises, the mortgagee’s formal consent is never obtained. The practitioner may wrongly assume that because the mortgagee is on notice of the client’s impending tenancy, there is no need to obtain written consent.

> A client acquiring a business may ask the practitioner to do nothing more than peruse the lease or instruct the practitioner to negotiate terms of the lease and leave saying he or she will deal with the execution of the lease. Years later the client returns, having been evicted by the mortgagee.

THE LIV LEASE AND THE MORTGAGEE’S CONSENT

Clause 6.3 of the Law Institute of Victoria copyright lease of real estate provides that the landlord must give the tenant written consent to the lease from all relevant mortgagees. However, the clause can only be enforced after the lease has been entered into.

The clause is of little use to the tenant if the mortgagee refuses consent. The tenant client should be informed in order to fully protect its interests. The consent must be obtained before the tenant enters into the lease.
Our recommendations

Undertake the following when acting for a tenant.

☑️ Ensure the client is aware of the need to obtain some form of mortgagee’s consent even where there is a renewal, assignment or other dealing affecting the lease.

☑️ Carefully check whether there are any qualifications contained in the form of consent. For example, consent may be expressed to be operative only so long as the tenant is not in default under the lease. It may be necessary to seek amendment of the form of consent to properly protect the tenant.

☑️ Where the mortgagee refuses to provide formal written consent before the lease is executed, practitioners should 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.
7. Retail Leases Act

The RL Act has traps for both landlord and tenant practitioners.

EXAMPLES:

Disclosure of turnover information

A practitioner was instructed to prepare tender documents relating to the lease of retail premises. The current lease was due to expire in the near future. As part of the tender document, the practitioner included turnover details which had been obtained from the existing tenant pursuant to the terms of the lease. Pursuant to section 67 of the RL Act, turnover information must be kept confidential in certain circumstances. The existing tenant complained to the landlord that the turnover information should not have been disclosed.

No advice on section 61 of the RL Act

In one claim a practitioner acted for a client who was selling their retail business. As is common, the seller of the business was also transferring the lease of the premises from where the business was operated to the assignee.

Unfortunately, the practitioner overlooked the application of section 61 of the RL Act which meant that no disclosure statement was provided to the assignee. As a consequence, the assignor continued to be bound by the terms of the lease until the end of the current term, 12 months after the settlement of the sale of the business.

Had a disclosure statement been provided, the assignor would have been released from their obligations pursuant to the lease from the date of the assignment of the lease.

Ratchet clause in lease

A practitioner prepared a lease for retail premises. The landlord client subsequently decided to sell the property subject to the lease.

The practitioner prepared the sale documents. A copy of the lease was included in the contract of sale.

On receipt of the sale documents, the selling agent discovered that a ratchet clause had been included in the lease in breach of the RL Act.
CASE TO NOTE

Disputes sometimes arise after a lease is entered into about whether the RL Act applies.

In the case of Fitzroy Dental Pty Ltd v Metropole Management Pty Ltd & Anor [2013] VSC 344, the premises, the subject of the dispute, were located at 38-40 Brunswick Street Fitzroy.

The permitted use was as a ‘Conference Centre, Café/Restaurant and associated office and storage space’. The tenant sought a declaration that the use was retail and covered by the RL Act. The landlord argued that the premises were not ‘retail’ as they were not open to the public as a whole.

The premises were used mainly for pre-booked conferences. The landlord also argued that the premises were not retail because the person who contracts with the tenant (ie the hirer) is not the ‘ultimate consumer’. Justice Croft was satisfied the premises were retail as they were open to the public and because they were used by an entity other than the tenant.

DISCLOSURE REQUIREMENTS

Failure to comply with the disclosure requirements can result in the tenant having the right to terminate. Claims against practitioners acting for landlords may arise where the formal disclosure requirements are not met. Practitioners acting for either landlord or tenant must be able to recognise when a landlord is in breach of the disclosure requirements in order to advise clients of the rights flowing from a possible breach.

EXAMPLE

Making assumptions

Assumptions were made by both parties that planning permission had been sought and granted for use of premises as a bar and restaurant with a liquor licence. On the disclosure statement the landlord confirmed it had obtained planning approval for any renovations, redevelopments or extensions of the building.

Nothing was disclosed about the liquor licence because it was assumed the tenant was taking care of this. The prospective tenant later argued that the disclosure about planning approval suggested approval had also been obtained for a 3am liquor licence.

In fact, neither party had obtained the licence and the parties had not clearly communicated with one another on the issue. This misunderstanding was generated by poor communication between the parties and gave rise to a dispute about the meaning of the disclosure about planning approval.
DISCLOSURE STATEMENTS

The Retail Leases Regulations 2013 commenced operation on 22 April 2013.

The Regulations prescribe the use of four different disclosure statements.

- 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.

Appendix One sets out a table summarising the disclosure requirements under the RL Act as a general guide. Practitioners are encouraged to read the RL Act and the Regulations carefully.

RETAIL LEASES INFORMATION BROCHURE

In November 2012, the Victorian Small Business Commissioner issued an updated version of the retail leases information brochure.

This brochure must be provided by the landlord to the tenant when negotiating a new retail lease and is available at http://www.vsbc.vic.gov.au/retail-leasing-matters/information-brochure.

GUIDELINES – CURRENT MARKET RENT AND ENGAGING SPECIALIST RETAIL VALUERS

New guidelines have been issued by the Victorian Small Business Commissioner about current market rent and engaging specialist valuers.


MORE INFORMATION

More information about retail leases can be found in Appendix One, and under the headings:

- Outgoings – page 7
- Options – page 9
- Disclosure on renewal – page 10
- Retail leases – page 12
- Traps when setting market rent – page 13
- Assignment under Retail Leases Act – page 15
- Land tax – page 26
Our recommendations

- Practitioners determine at the outset:
  - whether the RL Act applies
  - the disclosure obligations under the RL Act.
- Practitioners familiarise themselves with the RL Act.
- Check the RL Act and the Regulations before advising a client. This is important given the RL Act and the Regulations are continually under review.
8. GST and leases

The GST treatment of leases is now reasonably well-understood but there are a number of aspects about which there is confusion and the subject of enquiries to the LPLC GST Hotline.

> The reimbursement or payment of outgoings by a tenant is treated as part of the consideration for the supply of the premises, in the same way as rent.

> The reimbursement of an outgoing (e.g. council or water rate) that, in itself is GST-free or GST exempt, will still be treated as part of the consideration for the grant of the lease and attract GST if the supply of the premises is taxable.

> The payment direct to a rating authority of an amount for which the landlord is ultimately liable (e.g. rates) is treated as a reimbursement.

> The payment or reimbursement of a landlord’s legal costs is treated in the same way as rent or the reimbursement of any other outgoing under the lease and so part of the consideration for the supply of the premises. Accordingly, if supply of the premises is taxable, the landlord must give the tenant a tax invoice for the costs reimbursement. It is not sufficient for the landlord’s practitioners to give the tenant their own tax invoice.
LONG-TERM NON-REVIEWABLE LEASES: TAXABLE SUPPLIES ON OR AFTER 1 JULY 2005

Has the tenant elected to pay the GST on the supply?

YES

NO

Has the tenant agreed to a change to the consideration for the supply?

YES

NO

Has the landlord made an arbitrated offer to change the consideration?

YES

NO

Has the tenant accepted the arbitrated offer?

YES

NO

The tenant pays the GST (based on 10% of the price)

The landlord pays the GST (based on the changed consideration)

The landlord pays the GST (based on the consideration under the original agreement)
9. Land tax

Section 50 of the RL Act prohibits the recovery of land tax from the tenant. However claims can still arise involving non-retail leases, usually where the practitioner fails to determine the basis on which land tax is payable or communicate it to their client.

**EXAMPLES:**

**Tenant’s complaint**

The lease provided that land tax was payable to the landlord but failed to provide it was payable on a single holding basis. The tenant’s practitioner was either unaware that the wording meant land tax would be payable on a multiple holding basis or failed to draw the client’s attention to liability for the tax on a multiple holding basis.

**Landlord’s complaint**

The landlord complained it had not been advised about the basis upon which land tax was calculated when a new lease was granted. The lease provided for the land tax payable by the tenant to the landlord to be calculated on a single holding basis whereas the landlord claimed it wanted it to be calculated on a multiple holding basis.

**LIV lease and land tax**

Practitioners need to be aware that the Law Institute of Victoria copyright lease of real estate provides for land tax to be included as part of the outgoings paid by the tenant, calculated on a single holding basis unless the RL Act applies.

Land tax may be recovered by the landlord on retail leases that predate July 2003 but section 121(2) of the RL Act outlines the procedures to be complied with.

**Our recommendations**

- Practitioners determine at the outset whether the RL Act applies.
- Where the RL Act does not apply:
  - ask the client at the outset which party is liable to pay for any land tax
  - where the tenant is paying any land tax, the tenant will need to know how land tax is calculated ie a single holding basis or multiple holding basis
  - when using the Law Institute of Victoria copyright lease of real estate, consider any necessary amendments where land tax is payable on a multiple holding basis.
10. Re-entry issues

When a tenant breaches a lease, the landlord is usually entitled to serve a notice of default on the tenant and in some circumstances a landlord may be entitled to re-enter the premises and terminate the lease. An example is where a tenant has failed to pay the rent, the landlord usually has a right to re-enter the premises in accordance with section 146(12) of the *Property Law Act 1958* (Vic).

Claims have arisen where a notice of re-entry has not been properly served.

**EXAMPLE**

**Improper service**

A notice of re-entry was served on the tenant at the address of the tenant as shown in the schedule to the lease. The lease required notices to be served on the tenant’s registered office.

The address of the tenant as specified in the lease was not the tenant’s registered address. The tenant argued that the re-entry was invalid due to the failure to properly serve the notice of re-entry in accordance with the terms of the lease.

**The LIV lease and re-entry notices**

Clause 7 of the Law Institute of Victoria copyright lease of real estate sets out the process to be followed where an event of default occurs. Importantly, relating to unpaid rent, a landlord cannot re-enter unless the rent is unpaid for 14 days after becoming due for payment. The effect of this clause is that the landlord cannot re-enter the premises in reliance on section 146(12) of the *Property Law Act 1958* but must wait until the 14 days have expired.

**Our recommendation**

- 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*. 
Emerging risk – PPS Act

The Personal Property Securities Act 2009 (Cwlth) (PPS Act) introduced a single national register of security interests for personal property and a new rule-based system to determine priorities between competing security interests. The new register commenced on 30 January 2012.

Practitioners acting for a landlord and/or tenant need to understand how the new register works, what personal property is likely to have security interests registered on it and how best to advise and protect their clients.

LPLC has written several bulletins describing the basics of how the PPS Register works, what businesses need to do and consider when acting in the sale of a business or real estate and leasing land. They are available on our website at www.lplc.com.au/category/bulletins/ or by clicking the links below.

Personal Property Securities Act 2009 (Cwlth) Background and Key Concepts (June 2011)
Personal Property Securities Act 2009 (Cwlth) Practicalities (Jan 2012)
Personal Property Securities Act 2009 (Cwlth) Issues for law firms (March 2012)
Sale of Business and the PPS Act (September 2013)
Land Leases and the PPS Act (September 2013)
Sale of Land and the PPS Act (September 2013)
LPLC Tenant’s Practitioner Checklist

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

The checklist can be photocopied for ongoing use.

PRELIMINARY

☐ Search the title to check the landlord’s name and see whether the property is mortgaged.

☐ Where the tenant or landlord is a company, conduct a company search to check the 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).

☐ Consider whether the intended use is permitted under the relevant planning scheme.

GENERAL

☐ If the property is mortgaged, ensure the mortgagee has consented to the lease in writing and the consent is in acceptable terms. Require a specimen of consent if the mortgagee won’t give a signed consent before the lease is executed.

☐ 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.

☐ 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.

☐ Advise a tenant client in writing of the risks of taking possession without an assignment of lease.

☐ 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 outgoings has been accounted for. Have owners corporation charges been dealt with?

☐ Include appropriate GST provisions.
  
  » Entitle the tenant to a tax invoice at the time of payment
  
  » If acting for the tenant, try to 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:

- 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?
  - Do the provisions concerning statements of estimated and actual **outgoings** conform to the Act?
- Do the following provisions conform to the Retail Leases Act 2003 (Vic)?
  - 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.
LPLC Landlord’s Practitioner Checklist

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

The checklist can be photocopied for ongoing use.

**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 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).

**GENERAL**
- Advise the landlord client to obtain directors’ guarantees where the tenant is a company.
- Check the guarantees have been properly executed.
- 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.
- If a security deposit or bank guarantee is to be provided, do not overlook obtaining it within the time specified in the lease.
- 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.
- 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?
- Check the liability for all outgoings has been accounted for. Have owners corporation charges been dealt with?
- 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.
- Check the version of the **lease to be executed** reflects the agreed terms and the client’s instructions.
- If acting for the landlord:
  - send a copy of the signed lease to the tenant
  - check that any security deposit has been lodged in an interest-bearing account.
- 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.
- 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.
- 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 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 the prospective tenant.
  - Has an adequate **disclosure statement** been provided?
  - Do the provisions concerning statements of estimated and actual **outgoings** conform to the Act?
  - Does the method of **rent review** conform to the Act?
☐ Do the following provisions conform to the Retail Leases Act 2003 (Vic)?
  » 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.
Appendix One

Table of disclosure requirements under the *Retail Leases Act 2003* (Vic)

<table>
<thead>
<tr>
<th>Application</th>
<th>Timing</th>
<th>Form</th>
<th>Sanctions/rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Negotiations</strong></td>
<td>At start of negotiations</td>
<td>&gt; Copy lease</td>
<td>50 penalty units</td>
</tr>
<tr>
<td>Section 15</td>
<td></td>
<td>&gt; Information brochure</td>
<td></td>
</tr>
<tr>
<td><strong>New leases</strong></td>
<td>At least 7 days before entering into lease</td>
<td>&gt; Disclosure statement in prescribed form:</td>
<td>No disclosure</td>
</tr>
<tr>
<td>Sections 17, 18</td>
<td></td>
<td>» Schedule 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(where premises are not located in</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a shopping centre), Retail Leases</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Regulations 2013 Vic.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>» Schedule 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(where premises are located in a</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>shopping centre), Retail Leases</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Regulations 2013 Vic.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; Copy lease</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Between 7 and 90 days after entering into</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>lease, tenant may give written notice that</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>disclosure statement has not been provided</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(s.17(2))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Having given the notice:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>» Tenant may withhold rent until disclosure</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(s.17(3))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>» – no rent is attributable to period</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>before disclosure (s.17(3))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>» Tenant may terminate before expiration</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>of 7 days after disclosure (s.17(3))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>Timing</td>
<td>Form</td>
<td>Sanctions/rights</td>
</tr>
<tr>
<td>-------------</td>
<td>--------</td>
<td>------</td>
<td>------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Disclosure misleading, false or materially incomplete</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; Tenant may terminate until 28 days after last to occur of disclosure, receipt of copy lease or entry into lease (s.17(5),(6))</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Effect of notice of termination</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; Termination occurs 14 days after notice of termination (s.18(1))</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; Within the 14 days, landlord may challenge the termination (s.18(2))</td>
</tr>
<tr>
<td>Lease renewals</td>
<td>&gt; In case of option, at least 21 days before term ends (s.26(1))</td>
<td>&gt; Disclosure statement in prescribed form (Schedule 3, Retail Leases Regulations 2013 Vic)</td>
<td>&gt; Same as for failure to comply with disclosure requirements of s.17 (new lease) (s.26(3)-(6))</td>
</tr>
<tr>
<td>Section 26</td>
<td>&gt; Where no option but only agreement to renew, within 14 days after agreement made (s.26(1))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>Timing</td>
<td>Form</td>
<td>Sanctions/rights</td>
</tr>
<tr>
<td>-------------</td>
<td>--------</td>
<td>------</td>
<td>-----------------</td>
</tr>
</tbody>
</table>
| **Assignments**  
Sections 61, 62 | > Assignor may request landlord to provide disclosure statement current to within 3 months (s.61(5))  
> In the case of an ongoing business, assignor must give landlord and assignee a disclosure statement (no time prescribed but not later than assignment) (s.61(5A)) | > Before requesting consent, assignor to give assignee copy of disclosure statement and details of changes (s.61(3))  
> Form previously given by landlord to tenant  
> Schedule 4, Retail Leases Regulations 2013 Vic  
> In the form prescribed | > Assignor liable to penalty of 10 penalty units (s.61(3))  
> If landlord fails to comply, liable to penalty of 10 penalty units and tenant not obliged to comply with s.61(3) (s.61(5))  
> No penalty provided but the assignor and guarantors would not be released from liability under s.62 |
Appendix Two

Other provisions under the Retail Leases Act 2003 (Vic)

APPLICATION

Practitioners need to be aware of the circumstances in which the Retail Leases Act 2003 (Vic) (the Act) applies and the consequences of non-compliance. For example, if a lease fails short of the five-year minimum term, it is extended by virtue of section 21. If the landlord does not comply with the disclosure requirements, this gives the tenant the right to terminate.

> The Act applies to retail premises leases entered into or renewed after the Act commenced: 1 May 2003.

> Retail premises with occupancy costs equal to an amount prescribed by regulation (currently $1 million per annum) are exempt. Occupancy costs are defined in section 4(3).

> The application of the Act is no longer governed by size of floor area.

> Retail premises used only for the provision of services are not subject to the Act if the premises are wholly or partly on the fourth or higher storey of a building (excluding any basement levels) which is not in a retail shopping centre (Minister’s determination 29 April 2003).

> Premises leased for 15 years or more where the lease requires the tenant to build or maintain the structure or plant and equipment and disentitles the tenant from removing them, are excluded from the Act (Minister’s determination 20 August 2004). There is some controversy over the correct interpretation of this determination.

> Franchises are no longer exempt.

> An exemption applies to listed corporations and their subsidiaries.

> There are other ministerial determinations exempting certain leases from the application of this Act (Barristers’ Chambers Ltd, leases by councils to not-for profit bodies and leases at Melbourne Markets). The Minister’s determination dated 22 July 2008 is currently under review. It is proposed to expand the existing determination to include a broader range of leases which can be exempt where they are for a community purpose.

MINIMUM TERM: SECTION 21

> Leases must have a minimum five-year term (taking into account any options) unless at the tenant’s request, the Small Business Commissioner certifies that an explanation has been given to the tenant and the tenant waives the application of the relevant section by delivering a copy of the certificate to the landlord.

> The extension operates in relation to the initial term only and does not alter any option for renewal. For example, a lease for a term of two years with an optional further term of two years would see the initial term changed to three years so as to provide the total minimum term of five years (taking into account the two-year option).
NOTIFY COMMISSIONER OF LEASE DETAILS: SECTION 25

> When acting for a landlord you must notify (in writing) the Small Business Commissioner of certain details of the lease within 14 days of it being signed by all the parties. Failure to do so can result in a fine of 10 penalty units.

UNCONSCIONABLE CONDUCT: PART 9

> Part 9 of the Act deals with unconscionable conduct. The provisions repeat section 51AC of the Trade Practices Act 1974 (Cwlth) with three extra circumstances.

SECURITY DEPOSITS: SECTION 24

> Security deposits must be lodged by the landlord in an interest-bearing account on behalf of the tenant. Interest is added to the security deposit and the landlord must give the tenant details of accrued interest. The tenant will be liable for tax on the interest.

FIT-OUT

> Certain requirements apply whenever a tenant is required to pay or contribute to the cost of alterations connected with fit-out and the requirements are designed to set a limit on recovery: section 30.
> Until a landlord’s fit-out is completed, rent and outgoings are not payable: section 31.
> A special rent may be charged to cover the landlord’s costs of fitting out: section 32.

REPAIR (SECTION 52)

> The landlord is under a specific obligation to repair. Urgent repairs are no longer capped at $5,000.

INTERFERENCES WITH TENANCY

> The tenant is required to give notice of the loss or damage associated with an interference with the tenancy but this is not a pre-condition to an entitlement to compensation for interference: section 54.
> At least 60 days’ notice of refurbishment works which might adversely affect the premises must be given: section 53.
> Relocation provisions deal with clauses providing for termination accompanied by the offer of new premises and also the question of rent for the alternative premises: section 55.
> There is a two-level compensation regime where a tenant is required to vacate premises intended for demolition, which depends on whether the demolition is carried out: section 56.
> An abatement and termination regime applies relating to damaged premises: section 57.
> Refurbishment and re-fitting provisions are void unless they give details of the nature, extent and timing of the work to be carried out by the tenant: section 58.
RETAIL TENANCY DISPUTES (PART 10)

► Part 10 deals with disputes.

► Generally, (ie. except for injunctions) you cannot issue in VCAT unless the Small Business Commissioner certifies that mediation (or another form of ADR) has failed or is unlikely to resolve the dispute. VCAT is given the same jurisdiction as the Supreme Court to provide relief from forfeiture. Parties must bear their own costs in VCAT except where the proceeding is vexatious, a party has conducted the proceeding in a way that unnecessarily disadvantaged the other or refused to take part in mediation.

RENT REVIEW: SEE PAGES 12–13

ASSIGNMENTS: SEE PAGES 14-16

This is not a comprehensive summary of the Retail Leases Act. Practitioners are encouraged to read the Act carefully.