

Update: 6 August 2013 Retail Leases Act - regular problems



Fleming Muntz
Solicitors



Summary

The NSW *Retail Leases Act* celebrates its 20th anniversary next year, but in our experience, the general level of compliance outside major shopping centres has always been low.

This update sets out some (and only some) of the problems we see regularly.

Disclosure statement deadlines

Most landlords provide a disclosure statement of some sort. It is less common for it to be provided, as required, seven days before the lease is signed, the tenant moves in or starts paying rent.

The tenant is then supposed to provide its disclosure statement within a further seven days and this seems to happen even less often.

Does the Act apply to ...?

Agreements to lease? Yes. The Act specifically covers an agreement to grant a lease, even if it is signed many months before the lease is scheduled to start.

Exercise of an option? Yes. An option is just a new lease, so the Act applies.

Variation of a lease? If the variation is effectively the exercise of an option, we believe yes. If the variation just changes minor administrative provisions, no.

What if I haven't complied?

The low compliance levels are surprising given the fundamental consequences, especially for the landlord.

If the landlord doesn't provide the disclosure statement, or it is incomplete, the tenant can walk away during the first six months.

At the other extreme, if the landlord does not obtain a section 16 certificate, the tenant can choose to stay for five years, regardless of the landlord's wishes.

How can Fleming Muntz help?

A lot of people believe that the *Retail Leases Act* might be appropriate for large shopping centres, but is overkill for single shop premises.

Regardless, the Act is what we have to work with and Fleming Muntz can assist with compliance throughout the leasing process.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

Like you, we prefer to avoid unwanted emails. If you would rather not receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au.

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