

# Lessees

# Before you lease



Small  
Business  
Commissioner

The information provided in this fact sheet does not replace legal advice. Leases may vary and we recommend seeking legal professional advice if you are unsure about your obligations.

## Remember:

If you are unsure about your obligations under a retail lease, including requirements under the *Retail Leases Act 1994*, then you should consider seeking professional advice.

You can contact the NSW Small Business Commission for further guidance and information about retail leasing in NSW.

Entering into a retail lease is a **major financial commitment** and it's important that both parties understand their rights and obligations before entering the lease.

Retail leases can also be different to other types of leases, including other commercial or residential leases. In NSW, the *Retail Leases Act 1994* includes certain requirements that must be followed when entering a retail lease and throughout the lease period. These include prescribing disclosure requirements, prohibiting certain practices and defining standard requirements that apply to all retail leases.

### Additional resources:

Retail Lease Basics: <https://bit.ly/3WzeYkb>

Retail Lease Lessor and Lessee's Disclosure Statement: <https://bit.ly/3WyWobK>

Contact the NSW Small Business Commission for information and guidance about retail leasing or assistance with dispute resolution

### Contact us:

Call **1300 795 534**

Make an online enquiry:

[www.smallbusiness.nsw.gov.au/contact-us](http://www.smallbusiness.nsw.gov.au/contact-us)



See **over the page** for a summary of some helpful retail leasing tips.

Parties to a retail lease are encouraged to read the NSW Retail Tenancy Guide which provides information about retail leases in accordance with the *Retail Leases Act 1994* and is designed to help both lessors (landlords) and lessees (tenants) successfully negotiate and manage positive outcomes.

NSW Retail Tenancy  
Guide 2022



NSW  
Small  
Business  
Commissioner

[smallbusiness.nsw.gov.au](http://smallbusiness.nsw.gov.au)

The NSW Retail Tenancy Guide is available on our website.  
<https://bit.ly/4bS7SeR>

# Helpful retail leasing tips for lessees

Remember: You can read the [NSW Retail Tenancy Guide](#) for more information about retail leasing

## The Premises

- Ensure the property is suitable for operating your business and you understand what the lease allows you to do ([permitted use](#)).
- Check what [licenses or permits](#) might be required? Will you need [development consent](#) from the local council? ([NSW Retail Tenancy Guide, pages 6 and 8](#)).
- Check the [description of the premises](#) in the lease is accurate and clearly defined and that the lease covers any rights you will have to use common areas or parking.
- Before taking possession, consider doing an [inspection/condition report](#) (including photos) that both the lessor and lessee sign ([NSW Retail Tenancy Guide, page 8](#)).

## The Lease

- Ensure everything offered and agreed by the lessor is documented in the lease.
- Check for provisions about [maintenance, relocation, demolition](#), and [options to renew or extend](#) the lease ([NSW Retail Tenancy Guide, pages 17-21](#)).
- Ensure you read the lease and other lease documents and seek advice on anything that is unclear ([NSW Retail Tenancy Guide, page 8](#)).
- If your lease does not specify a communication method, confirm this with the lessor prior to the lease commencement as the lessor should seek your permission to communicate notices via email.
- Obtain a copy of the Lessor's [Disclosure Statement](#) at least seven days before you begin a new lease or renew a lease ([NSW Retail Tenancy Guide, page 11](#)). This sets out the extra expenses that you will be expected to pay such as the lessor's outgoings in addition to rent ([NSW Retail Tenancy Guide, page 13](#)).

## Leasing Process

- Seven days before you sign the lease, ensure you complete and return [Part B of the Disclosure Statement \(the Lessee's Disclosure Statement\)](#) and document any statements that you have relied on in agreeing to lease to prevent disagreements later ([NSW Retail Tenancy Guide, page 11](#)).
- Note that if a lease is assigned with the [sale of a business](#), there are additional steps that need to occur to be released from ongoing liability ([NSW Retail Tenancy Guide, page 22](#)).

## Financial Terms

- Ensure that the [type of rent](#) you will be charged is clearly outlined in the lease (i.e., is it gross rent?) and how it will be increased ([NSW Retail Tenancy Guide, page 9](#)).
- Ensure you understand the total costs you have agreed to, such as [rent, outgoings, fit-out costs](#) and other [occupancy costs](#). Be sure to calculate whether the total costs will be affordable for you ([NSW Retail Tenancy Guide, Page 7](#)).

## Lease Security

- Be aware of any [security payments](#) required such as a cash bond, unlimited personal guarantee/third party guarantee or a bank guarantee ([NSW Retail Tenancy Guide, page 14](#)).

## Specific Provisions

- Check whether your lease has an [option to extend or renew](#) the lease and note the deadline for notifying the lessor. The lessor does not have to remind you, so ensure you are aware of the timeframe for exercising the option ([NSW Retail Tenancy Guide, pages 20-21](#)).
- Understand who is responsible for [maintenance and repairs](#) of the building and infrastructure, plant and equipment, air conditioner etc. before the lease is entered into ([NSW Retail Tenancy Guide, page 17](#)).
- Check any ['make good'](#) provisions that set out your obligations for returning the premises to the lessor when the lease ends ([NSW Retail Tenancy Guide, page 13](#)).
- If the premises are in a shopping centre, make sure you are aware of some of the unique requirements related to operating in a [shopping centre](#) ([NSW Retail Tenancy Guide, page 9](#)).

## We encourage seeking legal advice for the following:

- Provisions regarding taking a previous [lessee's abandoned fit out](#).
- Agreements containing ['side deals'](#) or [incentives](#) which are not recorded in the lease.
- A [right of re-entry provision](#) for the lessor. These provisions can determine if a lessor can re-enter and terminate the lease for non-payment or late rent and whether they can do so without notice ([NSW Retail Tenancy Guide, page 18](#)).

## Key milestones for retail leasing



Inspect the property. Ask the lessor to provide you with a draft lease and the 'Before you lease' fact sheet.



Negotiate the terms of the lease. Seek legal and/or financial advice to ensure you understand your obligations.



The lessor must provide you with a Lessor's Disclosure Statement at least 7 days before the lease is entered into.



The lessee must provide the lessor with a Lessee's Disclosure Statement 7 days after receiving lessor's disclosure statement.



The lessor will provide lessee with executed copy of the lease and register the lease if more than 3 years.