

# Lessors

# Before you lease



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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



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The NSW Retail Tenancy Guide is available on our website.

<https://bit.ly/4bS7SeR>

# Helpful retail leasing tips for lessors

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

## The Premises

- Encourage the lessee to make the appropriate enquiries with the local council and any other relevant authorities to check whether the property is suitable for operating their business ([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 the lessee has to use common areas or parking.
- Before the lessee takes possession of the premises, 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 between the parties is documented in the lease.
- Confirm the lessee understands the terms of the rent and how it will be charged.
- Before you advertise a premises or make an offer to enter a lease, you must have a draft lease prepared and available for a prospective lessee. ([s 9 Retail Leases Act](#)).
- Consider seeking legal and financial advice when preparing a lease document to ensure that it is compliant with the *Retail Leases Act 1994* and any other relevant legislation.

## Leasing Process

- Seven days before the lease is signed, you must provide a [Lessor's Disclosure Statement](#) to the lessee with estimates of all the costs payable under the lease. ([s 12 Retail Leases Act](#)).
- The lessee must return Part B (Lessee's Disclosure Statement) signed, to you no later than 7 days before the lease commences. ([s 11A Retail Leases Act](#)).
- Note that if a lease is assigned with the sale of a business, there are additional steps that need to occur to release the outgoing lessee from liability ([NSW Retail Tenancy Guide, page 22](#))

## Financial Terms

- Provide details of all outgoings the lessee is agreeing to pay under the lease in the [Lessor's Disclosure Statement](#). Any costs not disclosed might not have to be paid ([s 12 Retail Leases Act](#)).
- Ensure the type of rent charged is clearly outlined in the lease and how it may be increased ([NSW Retail Tenancy Guide, page 9](#)).

## Lease Security

- Provide details of [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

- Ensure the lease clarifies who is responsible for [maintenance and repairs](#) of the building and infrastructure, plant and equipment. Ensure the lessee is aware of any equipment they are responsible for (air conditioner etc.) ([NSW Retail Tenancy Guide, page 17](#)).
- Ensure that clear details are provided in relation to works required at the end of the lease to 'make good' the premises.

## Important to Consider

- Does the lease contain a [right of re-entry provision](#) for the lessor? The lease may allow you to provide notice to terminate the lease for non-payment or late rent. Alternatively, the provision may allow you to re-enter and terminate the lease without notice. It is important to be aware of what the lease allows and seek legal advice if unsure ([NSW Retail Tenancy Guide, page 18](#)).
- If the lease does not specify a [communication method](#), you should seek the lessee's permission to communicate notices via email. Confirm prior to the commencement of the lease.

## Key milestones for retail leasing



Prepare draft lease. Consider providing prospective lessees the 'Before you lease' fact sheet.



Negotiate the terms of the lease.



Provide lessee with Lessor's Disclosure Statement at least 7 days before the lease is entered into.



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



Provide lessee with executed copy of the lease and register the lease if more than 3 years.