



TCRC *Property Update*

Our TCRC *Property Updates* are intended to bring important property issues and current training programs, seminars and events to your attention.

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Can the cost of a Condition Report be passed onto Tenants?

Condition Reports are quickly being embraced by both Landlords and Tenants, with both parties realizing the importance of holding such evidence.

Unknown to most Landlords and Tenants is the ability for Landlords to pass on the cost of Condition Reports under the terms of a lease.

For example: Clause 1(b) of the standard REIV Commercial Lease reads as follows:

“To pay on or before the due date all rates, taxes and (including Land Tax unless the Retail Leases Act applies to this lease), charges assessments, body corporate levies (other than those of a capital nature) **and all other outgoings whatsoever which are now or may at any time in the future be assessed, charged or payable in respect of the Premises or on the owner or occupier of the Premises**”.....

Further the standard Law Institute lease also allows for the passing on of costs to Tenants.

Clause 2.1.11 (a) states

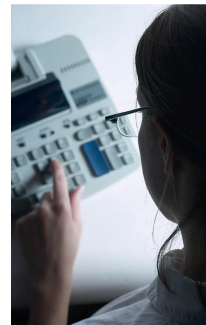
“The Tenant must -
pay on demand the Landlord’s **reasonable** expenses of -
(a) the negotiation, preparation, settling, execution and stamping of this lease”

Clause 2.1.2 also suggests the Tenant must pay when due the outgoings listed in the lease schedule. In order to be transparent of all the costs involved as part of the lease it is recommended the Condition Report costs are raised at lease negotiation stage, though listing the cost in the schedule is not necessarily required.

If you are a Tenant or Tenant Representative it is imperative you understand that these costs can be passed on. At negotiation stage Tenants would be wise to raise sharing the cost of a Condition Report.

According to the Office of the Small Business Commissioner (SBC), the above clause and any similar clauses would be void at the commencement of a retail tenancy as section 51 (a) of the Retail Leases Act 2003 forbids passing on “Lease Preparation Costs” to retail tenants. However, the SBC agrees the cost of condition reports carried out throughout the term (for example, before the commencement of lessee works) can be on-charged to the lessee.

In relation to the recovery of Condition Report costs, it is recommended you refer to the recovery clauses of your lease.



Savvy Tenants are doing the sums and are now requesting Condition Reports

DTZ’s recent “National Corporate Occupier Survey” stated that 41% of respondents said they would commission a Condition Report prior to committing to a new lease. And, bear in mind these respondents were all Tenants!

In most cases where the Tenant commissions a Condition Report, the Tenant does not disclose (nor is required to disclose) this to their Agent or Landlord.

We recently acted for a Tenant whose Landlord did not hold a Condition Report. Not having a Condition Report cost the Landlord in excess of \$60,000 in reinstatement costs simply because the Landlord could not prove the original condition of the premises - no evidence existed.

Based on the above case, there is absolutely no doubt a Condition Report will assist both parties during the term of a lease and particularly at the expiry of a lease when make-good obligations are enforced. However, the problem is understanding what “make-good” actually means.



Upcoming Training, Seminars & Events

Future Directions Mid Year Function - Property Council of Victoria and Future Directions are holding their mid year function on 27th July 2006 at 6Links in Flinders Lane Melbourne. For details contact ldavis@vic.propertyoz.com.au or 9650-8300

REIV Young Agents Group - The REIV Agents Group is holding its second function on 27th July 2006 at Giorgio’s Restaurant in High Street Malvern. For details contact Catherine Skutela at the REIV on 9205 6629.