

TCRC *Property Update*

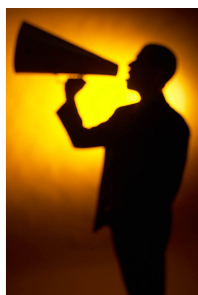
Our TCRC *Property Updates* are intended to bring important property issues and current training programs, seminars and events to your attention.

If you wish to submit content for an article or be removed from the distribution, please feel free to contact me.

Kylie Charlton
Licensed Estate Agent



Verbal
Leases



Lease may not be in writing

Commercial landlords and tenants should remember that they may have entered into a lease even if they have not signed a lease or the terms are not recorded in writing. A lease is entered into on the earlier of the following -

- when the tenant occupies the premises with the landlord's consent;
- the tenant pays rent; or
- all parties sign the lease or agreement to lease.

Landlords should remember that if the lease is subject to the *Retail Leases Act 2003* (Vic), they must deposit the Tenant's security deposit in an interest bearing account and account to the tenant for the interest earned on the deposit. The landlord may retain the interest as part of the deposit, but the tenant is entitled to a refund of the deposit and interest when the lease ends provided that the tenant has performed its obligations under the lease (and provided its Tax File Number).

If the *Retail Leases Act* applies, the Landlord cannot refuse a bank guarantee as a security deposit. Tenants cannot be made to pay the landlord's land tax under leases which commenced after 1 May 2003. A clause in a lease is void to the extent that it makes the tenant liable.

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John O'Callaghan the Victorian Chairman of McGees recently announced the sale of the business to DTZ Australia. Mr O'Callaghan said they had been deliberating for many years and searching to find the right compatibility with the company's values, culture and people. The staff will basically remain the same with Richard O'Callaghan (recently titled "industrial guru" by The Age newspaper) Director and Officer in Control of their Mt Waverley office.

DTZ Australia has grown a very stable and highly regarded business profile in the Melbourne market in a seemingly short time. DTZ is the second largest real estate advisory firm in the UK and the sixth largest internationally.

How to use the Small Business Commissioner to resolve disputes

Office of the Victorian
Small Business Commissioner
Education | Investigation | Mediation | Representation

The Victorian Small Business Commissioner (VSBC) has responsibilities for dispute resolution under both the *Retail Leases Act 2003* and the *Small Business Commissioner Act 2003*. Under the Act one of the functions of the Victorian Small Business Commissioner is:

"to make arrangements to facilitate the resolution by mediation or by another appropriate form of alternative dispute resolution, of retail tenancy disputes"

Under the *Retail Leases Act*, the Victorian Small Business Commissioner must arrange for each retail tenancy dispute to be the subject of mediation by a mediator or another appropriate form of alternative dispute resolution by a suitably qualified person.

To make an application for mediation you should visit the website www.sbc.vic.gov.au and download the application for a "Referral of a Retail Tenancy Dispute" - this form can be submitted online, by fax or by post.

If the VSBC is unable to reach satisfactory mediation, the matter can be referred to the Victorian Civil and Administrative Tribunal (VCAT) for a more formal hearing process.

Dispute resolution through mediation costs each party \$95 per day.