

ENTERING A COMMERCIAL LEASE 5 CRITICAL QUESTIONS



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5 Critical Questions Before Signing a Commercial Lease

Essential Considerations for Landlords, Tenants and Agents

Questions while reviewing? Email hello@lexalia.com.au or book a 15-min chat

Commercial lease negotiations can move quickly. Terms get discussed, heads of agreement are signed, and suddenly you're looking at a final lease document ready for execution. It's tempting to assume everything discussed is properly documented.

But the gap between what parties think they've agreed and what the lease actually says causes more disputes than almost anything else. This checklist covers five critical questions to ask before signing - questions that can prevent costly misunderstandings and preserve the commercial relationship you've worked to build.

These aren't just legal technicalities. They're practical considerations that affect how your tenancy operates day-to-day and what happens when circumstances change.

QUESTION 1

Do the Outgoings Provisions Clearly Define What's Included and How Calculations Work?

Outgoings disputes rank among the most common lease conflicts because the costs are substantial and the calculation mechanisms are often poorly documented. Before signing, verify that your lease specifically addresses these elements:

What costs are included: Does the lease list specific categories like council rates, water rates, building insurance, property management fees, common area maintenance and statutory charges? Equally important, what's excluded? Capital improvements, landlord legal fees, structural repairs and pre-existing issue remediation shouldn't typically pass through to tenants.

How your share is calculated: For multi-tenancy properties, is the apportionment based on floor area, fixed percentage, or another method? Is the formula mathematically workable and clearly documented?

When and how reconciliations occur: If you're paying estimated outgoings monthly, when does annual reconciliation happen? What supporting documentation will you receive? How long do you have to query charges or pay any shortfall?

Why this matters: Vague outgoings clauses mean both parties genuinely believe they're right when disputes arise. A landlord includes capital improvements in reconciliation believing the lease requires it. The tenant objects, believing such costs are excluded. Both interpretations seem reasonable given ambiguous language, but now you have a dispute that could have been avoided with specific documentation.

QUESTION 2

Are Make-Good Obligations Specific Enough to Avoid End-of-Lease Disputes?

Make-good clauses using generic language like "good condition" or "original state" sound reasonable at lease commencement, but prove ambiguous at lease end when both parties have different expectations about what's required.

Specific condition requirements: Does the lease itemise exactly what's needed? Repainting (how many coats, which areas)? Carpet replacement or professional cleaning? Fixture repairs or replacements? Specific finishes or quality standards?

Treatment of your fitout: Who owns the fitout at lease end, and who's responsible for removing it? If it must be removed, what condition must the premises be returned to? If the landlord is keeping the fitout, does this change other make-good obligations?

Timeframes and assessment process: How long do you have to complete make-good works? Can you remain in possession while completing them? How will the landlord assess compliance, and what happens if deficiencies are identified?

Why this matters: A tenant installs extensive shopfitting and budgets for removal at lease end. The landlord assumed the shopfitting would remain. Neither party is being unreasonable—they simply had different understandings because the lease didn't clearly address fitout ownership and make-good obligations. At lease expiry, this creates conflict that affects both handback and the commercial relationship.

QUESTION 3

Does the Fitout Clause Address Approvals, Ownership and Reinstatement?

Questions about fitout, alterations and improvements generate frequent disputes during leases because the arrangements weren't clearly documented upfront. Before signing, ensure your lease addresses:

What approvals you need: Is landlord consent required for all alterations, or only structural changes? What's the process for requesting approval? Can consent be withheld at the landlord's discretion, or only on reasonable grounds?

Who pays for what: This includes not just the fitout works themselves, but landlord's costs for consultants or engineers to review proposals, costs for obtaining consents or approvals, and costs for making good or reinstating at lease end.

Compliance and certification: What certifications, approvals or compliance documentation must you provide before and after works? Who's responsible for ensuring building code and regulation compliance?

Ownership implications: Does your fitout remain your property, or does it become the landlord's fixture? This affects insurance, make-good obligations, and what happens if you assign the lease.

Why this matters: Unclear fitout provisions create conflicts throughout the tenancy. A tenant undertakes alterations believing they're within permitted scope. The landlord maintains prior approval was required. Or the tenant expects to remove fitout at lease end, but the landlord believes it's become part of the premises. These disputes could be prevented with clear documentation about approvals, ownership and obligations.

QUESTION 4

Is the Rent Review Mechanism Unambiguous and Mathematically Workable?

Rent review clauses sometimes seem straightforward at signing but prove problematic when review dates arrive. I've seen reviews delayed for months while parties argue about interpretation or discover the mechanism can't actually be calculated.

Can it actually be calculated: If using fixed percentage increases, is the exact percentage stated and how it compounds documented? If using CPI increases, is the specific index and reference periods defined? If using market reviews, are the valuation parameters clear?

What happens if you disagree: Does the lease specify a dispute resolution process? Expert determination? Arbitration? How are those costs allocated? Are there timeframes that could result in waiver if missed?

Are there floors or caps: Can rent decrease on market review, or only increase? Are increases capped at a certain percentage? Do any minimum or maximum provisions apply?

Does it work with other terms: If outgoings are separately recovered, does the market review formula account for this to avoid double-counting? Is the review mechanism consistent with the overall lease structure?

Why this matters: Ambiguous or unworkable rent review mechanisms create disputes at precisely the time when both parties are recalculating their commercial position. A formula that seemed fine at signing proves impossible to apply. Market review parameters are interpreted differently. What should be a straightforward administrative process becomes a negotiation or potential litigation—and the commercial relationship suffers throughout.

QUESTION 5

Does the Permitted Use Give Appropriate Flexibility While Protecting Interests?

The permitted use clause defines what business activities you can conduct from the premises. This provision needs to balance specificity for protection with flexibility for operations—and getting that balance wrong creates problems throughout the lease term.

Is it specific enough for certainty: Does the permitted use clearly identify your core business activity? Is it worded so both parties would reach the same conclusion about what's allowed?

Is it flexible enough for evolution: Can you expand into logical adjacencies as your business grows? A café adding catering services, or a professional practice offering training workshops? Does every variation require formal lease amendment?

What's specifically prohibited: Are there activities you cannot conduct due to building restrictions, council conditions, incompatibility with other tenancies, or landlord policy? Are these clearly stated?

How does it affect assignment: If you sell your business, can the lease be assigned to any business operating within the permitted use? Or does the landlord have additional discretion? A too-narrow permitted use might limit your exit options.

Why this matters: Poorly drafted permitted use clauses create friction throughout the tenancy. A tenant wants to add complementary services as their business evolves, but the permitted use is too narrow. The landlord maintains the changes require approval or aren't permitted at all. Or at sale time, the narrow permitted use limits who can take assignment, affecting the business value. Clear permitted use provisions prevent these conflicts.

IMPORTANT NOTE

These five questions highlight critical considerations for commercial lease documentation. Every tenancy has unique circumstances that require professional advice tailored to your specific situation. This checklist helps you identify areas needing attention—working through them with your lawyer ensures your lease properly documents the commercial arrangements you've negotiated.

READY TO REVIEW YOUR COMMERCIAL LEASE?

Understanding these critical questions is the first step toward preventing disputes. The next step is ensuring your specific lease documentation addresses each consideration clearly and reflects the commercial deal you've actually negotiated.

I work with landlords, tenants, property managers and leasing agents across Sydney's Northern Beaches and throughout New South Wales to ensure commercial leases are clear, fair and properly documented. Whether you're negotiating a new lease, reviewing terms before signing, or preparing for renewal, getting the documentation right makes a meaningful difference throughout the tenancy.

Ready to work through your commercial lease documentation together? Let's ensure your lease accurately reflects your understanding and provides the clarity needed to avoid disputes.

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