

DIY COMMERCIAL LEASES

RED FLAGS & WHEN TO GET A LAWYER



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Red Flags: When Your Commercial Lease Needs Legal Review

Warning Signs for NSW Landlords

Commercial leases that don't account for your property's specific characteristics create ongoing problems. You might have a lease that looks professional, but if the terms don't match how your property actually functions, disputes become almost inevitable.

This guide identifies warning signs that your current lease or proposed lease template needs professional review. These red flags indicate situations where standard lease terms don't fit property realities, compliance requirements aren't met, or landlord protections are inadequate.

Think of this as a health check for your lease. If you identify several of these warning signs, professional lease review can prevent costly disputes and ensure your lease actually protects your interests.

When to Use This Guide

Best reviewed: Before signing a new lease, when disputes arise with current tenants, or when considering lease renewals

Most useful for: Commercial and retail property landlords, property investors, landlords experiencing tenant disputes

Critical Red Flags in Your Lease

RED FLAG 1

Your Property Has Shared Building Systems But Lease Has Standard Maintenance Clauses

If your property shares HVAC, plumbing, electrical systems, or other infrastructure with multiple tenancies, standard "tenant maintains internal equipment" clauses create immediate problems. When shared equipment fails, who pays for repair or replacement? Template leases don't address this.

This red flag is particularly serious if your property has aging shared systems likely to need repair or replacement during the lease term. Without clear allocation of responsibilities for shared infrastructure, every maintenance issue becomes a dispute about who's responsible.

What this means: Your lease needs specific provisions about shared system maintenance, cost allocation, and emergency repair protocols. Standard template clauses will create disputes, not prevent them.

RED FLAG 2

Standard Outgoings Clauses Don't Match Your Property's Cost Structure

Template leases typically assume utilities are separately metered and costs can be allocated by floor area. If your property has unmetered water, shared services, or common facilities that benefit tenancies unequally, standard outgoings provisions don't work.

Watch for situations where some tenants use significantly more utilities than others, where common areas primarily benefit certain tenancies, or where your property's actual cost drivers don't align with simple floor area allocation. Generic outgoings clauses create ongoing disputes in these scenarios.

What this means: You need outgoings provisions tailored to how costs actually arise in your property. Standard formulas that don't match your cost structure lead to recovery disputes and tenant friction.

RED FLAG 3**Generic "Restore to Original Condition" Clause for Older Property**

If your property has existing wear, aging fixtures, or equipment near end-of-life, standard make-good clauses create end-of-lease disputes. What does "original condition" mean for a property that's 20 or 30 years old with visible wear at lease commencement?

This red flag is critical if your lease lacks a detailed, photographed schedule of condition documenting actual property state at lease start. Without specific documentation of existing condition, you and your tenant will have completely different expectations about restoration requirements.

What this means: *Make-good terms need to reference documented actual condition and account for property age. Generic restoration language doesn't work for properties with existing wear or aging components.*

RED FLAG 4**Standard Alteration Clauses Don't Address Your Property's Constraints**

Template "alterations with landlord consent" provisions don't account for heritage restrictions, structural limitations, shared infrastructure impacts, or specialized compliance requirements. If your property has constraints that affect what alterations are feasible, standard clauses create friction.

This becomes a serious issue when tenants propose reasonable-sounding alterations that aren't actually possible given your property's characteristics. The lease should specify upfront what constraints apply, not leave this for dispute when alteration requests arise.

What this means: *Alteration provisions should reference your property's specific constraints and limitations. Standard consent clauses don't protect you when physical or compliance constraints limit what's feasible.*

RED FLAG 5

Lease Doesn't Include Adequate Landlord Protection Provisions

Template leases often underweight critical landlord protections. Missing or inadequate personal guarantees, insufficient security deposits, vague maintenance obligations, and unclear default provisions leave you exposed when tenant circumstances change.

This red flag is particularly concerning for corporate tenants, new businesses, or situations where the tenant is doing extensive fit-out. Without proper guarantees and security, you may have limited recourse if the tenant defaults or causes property damage.

What this means: Your lease needs landlord protections tailored to your tenant's financial strength and the property's risk profile. Standard template clauses often miss these critical protections entirely.

RED FLAG 6

Using Old Lease from Previous Tenant for New Tenancy

Recycling a lease from a previous tenant creates specific problems. The schedule of condition doesn't reflect current property state. Provisions about facilities or services may not match current arrangements. The previous tenant's use and needs were different.

This is especially problematic if property condition has changed, equipment has aged, or your new tenant's business operates differently than the previous occupant. Old leases also may not reflect current NSW leasing law requirements.

What this means: Even if the physical property hasn't changed dramatically, an old lease doesn't account for current condition, new tenant's needs, or updated legal requirements. Professional review is essential.

RED FLAG 7

Uncertain Whether Your Lease is Retail or Commercial Under NSW Law

If you're not certain whether your lease falls under the Retail Leases Act 1994 NSW, this creates serious compliance risks. Retail leases have specific disclosure requirements, minimum term provisions, and rent review restrictions that commercial leases don't.

Using the wrong lease type can affect enforceability and give tenants grounds to challenge provisions or exit early. The classification depends on the tenant's actual use, not just the property type or your intentions.

What this means: *Incorrect lease classification creates compliance issues and enforceability problems. Professional review ensures you're using the right lease type for your tenant's actual use.*

IMPORTANT NOTE

These red flags indicate situations where professional lease review is valuable. Every property and tenancy situation is unique, which is why understanding your specific circumstances matters for effective lease protection.

IDENTIFIED RED FLAGS?

Next Steps: From Concern to Confidence

If you've identified red flags in your current lease or proposed template, professional review can address these issues before they create disputes. Let's work through your lease together to ensure terms match your property's characteristics, protect your interests, and comply with NSW leasing requirements.

Ready to discuss your commercial lease concerns? Contact Jackie Atchison at LexAlia Property & Commercial Law to explore how your specific situation can be addressed effectively.

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