

What is a retail lease?

A retail lease is a legally binding contract between a tenant and landlord (the property owner) to occupy a premises primarily used for selling or hiring goods by retail or the retail provision of services.

Retail leases in Victoria are governed by the *Retail Leases Act 2003* (the Act) and the regulations made under it.

What you need to know

A landlord must provide: (1) a copy of the lease, (2) this information brochure and (3) a landlord's disclosure statement to a prospective tenant.

The Victorian Small Business Commission (VSBC) is the authority on retail leasing in Victoria and can impartially assist the resolution of retail leasing disputes. It can also provide information on the rights and responsibilities of retail tenants and landlords, as described in *the Act*.

The importance of your lease (contract)

A retail lease is an enforceable and legally binding contract that outlines the terms of your occupation of the premises and your rights and responsibilities. It's advisable that you have a lawyer experienced in retail leasing law review the proposed lease before you sign anything.

THE VSBC CAN HELP YOU TO RESOLVE DISPUTES

The VSBC can impartially assist tenants and landlords to resolve retail leasing disputes through a process called alternative dispute resolution.

This means the VSBC will speak with the parties (landlords and tenants) to discuss the disagreement and explore solutions that they can all accept.

This service is quicker and less expensive than the court system (i.e. VCAT, the Victorian Civil and Administrative Tribunal) and the outcome is legally binding if agreement is reached and terms of settlement are signed.

A retail leasing dispute cannot typically be heard at VCAT until it has been to the VSBC.

If a landlord and tenant have a dispute about a market rent review and can't agree on the appointment of a valuer, the VSBC can appoint a Specialist Retail Valuer to determine the rent.

QUESTIONS TO ASK YOURSELF...

- Have you **read the lease** in full?
- Have you read the **disclosure statement**? The landlord must provide it at least **14 days** before you enter into the lease.
- Did you know that the Act contemplates a **minimum five-year** term (including any option for a further lease term)?

If you would like a shorter term, you can request a certificate from the VSBC here vsbc.vic.gov.au/five-year-waiver
- How much is the rent** and does the lease specify how it can be **increased**?
- Have you **calculated the total cost** of outgoings? (costs the landlord can pass onto tenants – specified in the disclosure statement)
- How much is the **security deposit**? (sometimes required to be provided by way of a bank guarantee issued by a bank)
- What other costs do you need to budget for? (Consider any **fit-out costs**, moving costs and 'make good' costs at the end of the lease)
- What is the latest date for writing to the landlord to take up any **option to renew** the lease (i.e. further lease term)?
- Have you completed an **inspection report** and **taken photos** of the premises prior to taking possession of the premises?
- Have you checked if the **council allows** your intended use of the premises? Have you checked which **permits** you may require to operate your business in the premises?
- Have you considered getting **legal advice**?

FREQUENTLY ASKED QUESTIONS

Which documents should I be given before entering into a lease?

The landlord must give you a disclosure statement and the proposed lease at least 14 days before entering into a lease.

A disclosure statement contains information you require in order to make an informed decision about entering into a lease, including details about:

- the premises, including a plan if available, and the lettable area
- structures, fixtures, plant and equipment provided by the landlord
- the permitted use of the premises
- the term of the lease and length of any options to renew
- works, fit-out, refurbishment and alterations
- outgoings (costs you must pay), rent and rent adjustments.

If the landlord does not give you a disclosure statement you may be able to withhold rent after notifying the landlord, until the disclosure statement is provided.

What do I need to understand before signing a lease?

It's important to understand:

- the starting rent and rent increases
- outgoings and other occupancy costs
- the permitted use of the premises and how long it would likely take to get any permits from the local council
- your obligation to restore the premises to its original state at the end of the lease (and what that will likely cost), which is called a 'make good obligation'.

What does the Act require landlords to do?

The Act requires landlords to:

- give you a copy of the lease signed by the landlord within 28 days of you (the tenant) signing the lease and providing it to the landlord (unless you've agreed in writing to another period of time)
- repair and maintain the premises, structure, appliances, fittings and fixtures provided

under the lease (unless the tenant's misuse has caused the need for repairs or maintenance, or you have agreed to maintain essential safety measures)

- provide annual estimates of outgoings (you aren't obliged to contribute to outgoings until an estimate is provided) and reconciliation statements
- hold any security deposit in an interest-bearing account
- pay for capital costs, cost of preparing the lease and costs of complying with the Act
- give reminder notices about lease options, renewals and the landlord's intentions at the lease end (if these notices aren't given, your lease can be extended automatically)
- not unreasonably withhold consent to a request to transfer (assign) your lease (the Act includes requirements if you want to transfer your lease to a new tenant and your lease may also include reasonable requirements).

These requirements automatically form part of your lease and can't be overridden, even if your lease states otherwise.

When does a lease start?

You enter into a lease when you take possession of the premises **or** you start paying rent **or** the lease is signed by both you and the landlord.

You shouldn't do any of these things unless you are happy to go ahead with the lease.

How can I find information about my rights and responsibilities as a tenant?

Information on the rights and responsibilities of retail tenants is available at vsbc.vic.gov.au

How do I apply for the assistance of the VSBC?

All applications must be made to the VSBC on its website at vsbc.vic.gov.au/apply

How do I speak with the VSBC in a language other than English?

The Australian Translating and Interpreting Service provides immediate interpreting over the phone. Call 131 450, state your preferred language and then ask to speak with the Victorian Small Business Commission (1800 878 964).