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Don't get stitched

K&L Gates' Stephanie Goodlet shares her top five tips for leasing success.

YOU THINK THAT you have found the perfect space – but have you done your due diligence? Entering into a lease is one of the most significant financial commitments for most businesses and one of the most important decisions a business owner will make. Below are five key factors you should consider before signing a lease.

1. Don't underestimate the value of quality advice

Make sure you seek the advice of a lawyer with experience in leasing prior to signing a lease. Retail tenants enjoy significant protection under retail leasing legislation in each state. It's important you understand your rights and that your lease reflects the landlord's statutory obligations. You should also consider engaging a leasing consultant who can assist you to source a suitable space and negotiate the commercial terms of the lease with the landlord. Negotiating a lease can be challenging, but you might be surprised by the terms offered by a landlord when a skilled negotiator is advocating on your behalf. Benefits may include rent-free periods, fitout contributions and other incentives. Although legal and commercial advice may seem like an unnecessary expense at the time, it can save you money in the long run.

2. Do your research

Evaluate the premises, your business and think outside the box. Anchor tenants can be a major drawcard for smaller retailers as a means of increasing foot traffic, but don't assume their presence is guaranteed for the term of your lease. Even if the anchor tenant has long term tenure, leases can come to an end unexpectedly and the absence of an anchor tenant may have a significant impact on your business. Competition is



another key factor. Landlords aren't generally obligated to consider the impact a new tenant may have on an existing tenant. Consider whether there might be scope to negotiate a right of exclusivity to limit the landlord's capacity to enter into a lease with a competitor near your leased premises.

3. Know what you're signing

It's important to understand what you're signing before you sign it! There are a number of different documents that might be given to you during a lease negotiation. Some may not be binding, while others are binding and enforceable on signing. Tenants often make the mistake of signing a document before seeking advice on the false premise that there will be a further opportunity to negotiate terms down the track. Don't feel pressured to sign anything before seeking proper advice.

4. (Almost) everything is negotiable

Don't be afraid to negotiate clauses which might seem like standard terms. Big ticket items include the duration of the lease (and the right to renew), permitted use, rent payable (and how rent will be reviewed), recoverable outgoings and costs, repair and maintenance obligations, access rights, development and relocation clauses and termination.

If long-term tenure is important to you, consider negotiating an initial term with options for further terms. If you don't intend to trade seven days a week, make sure that your lease doesn't contain minimum

trading requirements. If you plan to operate 24 hours a day, be sure your lease provides access to the premises outside of normal business hours. Ensuring that the terms of the lease allow you to operate your business efficiently is critical.

5. Think about the end at the beginning

The best time to consider what will happen at the end of your lease is before it starts. End of lease obligations are the source of countless disputes. Does the lease simply require you to remove your fitout or return the premises to base building condition? The cost difference could be tens of thousands of dollars. Avoid an end of lease dispute by agreeing on your obligations up front – consider including a report detailing the condition of the premises and a make good schedule in the lease at the time of signing.

Entering into a lease can be overwhelming, but can also prove to be a significant asset to your business when approached correctly. Following these simple tips will help you to minimise the stress associated with your lease and ensure you can focus on the success of your business. ■

For more information about issues relating to retail and commercial leasing, please contact Will Grinter (Partner) at will.grinter@klgates.com or Stephanie Goodlet (Lawyer) at stephanie.goodlet@klgates.com. This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.