Problems Cease When You Know About Your Lease

Some Changes to the ADLS Sixth Edition Deed of Lease you should be aware of...

AUCKLAND DISTRICT LAW SOCIETY (ADLS) SIXTH EDITION DEED OF LEASE

THE new standard form Sixth Edition ADLS (Auckland District Law Society) Deed of Lease was released late 2012 and since then, there has been a series of changes with implications for both Landlords and Tenants.

THE standard form deed incorporates what’s considered to be fair between the interests of the landlord and the tenant and in light of recent difficult market conditions such as the GFC and the Christchurch earthquakes, the standard form lease has not only been tested but the new Sixth Edition contains changes in it which reflect the current economic climate.

RENT REVIEW

ONE significant change is how rent is reviewed. The Sixth Edition now provides an optional alternative to market rent review (which has always been in previous editions) - CPI (Consumer Price Index) rent review. The new CPI rent review is calculated using a mathematical formula contained in the lease and is based on adjusting the rent in accordance with the movement of CPI. It is envisaged that parties to a lease can elect one option of review or both if they are preferred. In recent years, there has been a tendency to use CPI reviews with the periodic market review in between. For example: CPI review every two years and a market review at the end of each term. This more closely reflects the current economic climate where the market has largely remained stagnant but CPI has kept increasing. The standard clauses do not contemplate situations where the rent review structure is more complex. For example: where CPI rent review is to be capped at a certain percentage or where CPI is calculated on a compounding basis. In such situations, we advise that you come and talk to us to get the right advice.

LEGAL COSTS

ANOTHER change is to Costs which is consistent with evolving common practice. Each party is now responsible for their own legal costs in relation to the negotiation and preparation of the lease and any variation or renewal of it. If you are the Tenant, this is one less expense out of your pocket but if you are a Landlord this is another burden to bear.

LANDLORD AND TENANTS’ MAINTENANCE OBLIGATIONS

TENANT’S maintenance obligations are another significant change in the new Sixth Edition. If you are a Tenant, it has always been the case that when your lease comes to an end, you must restore the premise to the condition it was in at the beginning of the lease. The state of the premises at the
beginning of the lease may sometimes be a contested issue, with Landlord’s and Tenant’s having different expectations as how the property should be left at the end of the lease. To avoid costly disputes about this, we recommend both Landlords and Tenants attach a premises condition report to the lease. It will be evidence of the condition of the premises at the beginning of the lease so that both parties know exactly what is expected of them.

**THERE** have also been changes to Landlord’s maintenance obligations as well, the main change being the obligation for the landlord to now keep the building *weatherproof*. As a landlord you must also keep building services in good order and repair through regular maintenance and if this cannot be achieved, then they must be replaced. It has been made clear in the Sixth Edition that the costs of replacement of building services are not recoverable as an outgoing under the lease so as a landlord, it is best to keep up with regular maintenance so as to avoid big lump sum costs that cannot be passed on to the tenant.

**GENERAL**

**THERE** are just some of the main changes in the new Sixth Edition (ADLS) Deed of Lease. There are of course many more, some big, some small and depending on your circumstances, commercial or otherwise, the changes may have big implications for you. The changes affect both tenants and landlords so if you are entering into a new lease, as either a Landlord or as a Tenant you should be aware of what you are now signing in light of the new changes.

If you need any advice, come and talk to us.

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