

COMMERCIAL LEASING

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Leases of commercial premises are an essential element of business. A lease provides certainty for both landlords and tenants, as to the term of the lease, the rent payable and other conditions that will apply throughout the lease.

However, many landlords and tenants are not aware of the intricacies of the law. For example, many tenants have leases that provide them with options to extend the term, yet they are unaware of the need to take action to protect their options, which can be lost if the premises are sold.

This issue was highlighted by a recent WA Supreme Court decision. The tenant held a lease for 7 years with options. On the sale of the premises, and the subsequent transfer of the premises to the new landlord, the Court held that the tenant's lease was destroyed and the option lost with it.

However, the tenant was able to persuade the Court (albeit at the cost of a trial and an appeal) that the conduct (part performance and communications) of the parties in the six months following the sale of the premises supported a conclusion that a new agreement for lease had been formed. The landlord was unable to remove the tenant or re-let the premises for a greater rent.

The case demonstrates the need for landlords and tenants to understand their lease arrangements. Commercial landlords and tenants should seek legal advice as to the structures presently in existence and the extent to which their leases will apply.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to this matter or other legal matters please contact our office at reception@hhg.com.au.

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