

COMMERCIAL LEASING – MORTGAGEE CONSENT?

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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. One important example involves mortgaged property. Two thirds of all property in Western Australia is mortgaged. So how does a mortgage impact on the lease relationship?

If the loan was from a bank, the landlord's mortgage will almost certainly require the owner to get the bank's consent before doing anything with the land. And that will include selling or leasing it. A landlord who fails to notify the lender of a proposed lease is probably in breach of their mortgage!

Fortunately most lenders are fairly reasonable about consenting to a lease. Provided the landlord is not trying to lease the land for say 20 years for no return, approval is normally given by way of a "mortgagee's consent", which is then attached to the lease as proof. If the landlord defaults on repayment, the lender is normally obliged to honour the lease where they previously gave consent.

Mortgagee consent is vital to a tenant's security. Without it, a lease might potentially be terminated if the landlord defaults under the mortgage.

A carefully drawn lease document should identify who is responsible for paying for the lender's consent. This is important since some financial institutions impose approval fees of up to \$400. There really is no substitute for a professionally prepared lease.

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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