

What is a commercial lease?

Grant · demise · reversion · forfeiture · determination

A lease is more than a bargain

THE CENTRAL IDEA

The tenant receives exclusive possession of identified premises for a certain term, usually in return for rent.

Contract

Promises about rent, repair, insurance, use and other obligations.

Estate in land

A legal interest in the land itself for the duration of the lease.

A lease divides possession over time

COMMENCEMENT

DURING THE TERM

WHEN THE LEASE ENDS

Grant and demise:

The lessor grants the leasehold estate, and the lease identifies exactly what is let.

Possession and reversion:

The tenant has the present right to possession. The landlord retains the reversion throughout the term.

End of the lease

The landlord's right to possession becomes immediate again

The lease term determines whether registration is required

Land Registration Act (Chapter 191)

Sub section 17(1)

“Subject to Subsection (4), an instrument is not effective to pass or create an estate or interest until the instrument is registered...”

Sub section 17 (4)

“Subsection (1) does not apply to a lease for a term of three years or less.”

Section 49(1) and (2)

A lease exceeding three years must be executed in the approved form and registered. A lease for three years or less, executed in the approved form, may be registered.

The landlord keeps the reversion

Land Registration Act (Chapter 191)

59 Lessors' rights preserved

Where a lease is noted by memorial on a certificate of title the person named in the certificate of title as seised of the land described in the certificate —

- (a) is seised of the reversion expectant on the lease; and*
- (b) has all powers, rights and remedies to which a reversioner is by law entitled; and*
- (c) is subject to all the covenants and conditions in the lease to be performed and observed by or on the part of the lessor.*

(*seised means holding an estate in land)

Justin Carter, 'Leases and Tenancies' in Halsbury's Laws of Australia (LexisNexis, online), [245-20] 'Reversionary interest', citing Ex parte Henry; Re Commissioner of Stamp Duties [1963] NSWLR 1079, 1085; [1963] SR (NSW) 298 (Brereton J), and the other authorities collected there.

In practical terms

The tenant has possession now. The landlord retains the future right to possession. If the property is sold, the purchaser acquires the reversion and becomes the new landlord; the tenant's registered lease continues.

The main clauses allocate money, risk, control and possession

Money and use

- Rent, review method and payment dates
- Outgoings and the true occupancy cost
- Permitted use, access, signage, parking and common areas
- Quiet enjoyment protects possession—not silence

Physical risk and exit

- Repair, replacement, structure and make-good
- A condition report can prevent repair becoming improvement
- Insurance, indemnity and damage
- Assignment, subletting, options and holding over

A sale of the tenant's business may depend on assignment

Section 55 — transfer of lease

A registered lease may be transferred by an instrument in the approved form. On registration, the transferor's estate, rights, powers and privileges pass to the transferee, which becomes subject to the lease liabilities as if originally named as lessee.

An assignment may require a transfer of lease on the title

What the tenant's lawyer must check

- Is landlord consent required?
- What information and guarantees may the landlord demand?
- Is a change of control treated as an assignment?
- Can the seller be released, or does liability continue?

A restrictive assignment clause can delay, or prevent, the business sale.

The written lease is not always the whole lease

Section 50 — lessor's powers

The Act implies powers to enter at reasonable times to inspect repair, give written notice of defects, and re-enter if specified defaults continue. For rent arrears and covenant default, the statutory period is six calendar months.

Section 51 — lessee's covenants

The Act implies covenants to pay rent, rates and taxes, and to keep and yield up the premises in good and tenantable repair. The covenants are suspended after specified destruction without tenant default - unless the lease stipulates otherwise.

Section 100 is the carve-out provision

THE STATUTORY MECHANISM

Section 99 of the *Land Registration Act (Chapter 191)* gives an implied covenant the same force and effect as if it were written out fully. Section 100 then permits an express declaration in the instrument to negative or modify an implied covenant or power.

Section 99

The implied term is legally effective even though it is not printed in full.

Section 100

“A covenant or power implied by this Act may be negated or modified by express declaration contained in the instrument or endorsed on the instrument.”

The standard lease may compress six months into 14 days

WHEN ACTING FOR THE TENANT: READ THE DEFAULT CLAUSE

A standard commercial lease excludes the statutory version, then reintroduces the lessor's protections as stronger express rights.

6 calendar months

Section 50: rent arrears or covenant default must continue for six calendar months before the implied re-entry power arises.

14 days

Illustrative express lease: re-entry may be triggered when rent remains unpaid for 14 days. This period comes from the lease, not section 50 of the LRA.

Forfeiture is one route to determination

Forfeiture

A particular method of ending the lease early because of tenant default. It usually requires a valid right of re-entry, the relevant trigger, compliance with applicable notice or remedy requirements, an effective election, and no waiver. Relief against forfeiture may also arise.

Determination

The broader result: the leasehold estate has ended. A lease may determine by expiry, surrender, merger, forfeiture and re-entry, or by another legally effective route.

A breach alone does not automatically determine the lease.

Section 60 records two routes to registered re-entry

60 *Re-entry by lessor*

- (1) *The Registrar, on proof to his satisfaction of —*
 - (a) *re-entry by the lessor under a power implied by this Act; or*
 - (b) *recovery of possession by the lessor by proceeding in law,**shall register the re-entry.*
- (2) *When registration is effected the estate of the lessee in the land is extinguished.*
- (3) *The determination of the lessee's estate by virtue of Subsection (2) does not release him from his liability in respect of the breach of a covenant expressed or implied in the lease.*

Route A

Re-entry by the lessor under a power implied by the Act.

Route B

Recovery of possession by the lessor through legal proceedings.

Ending possession does not erase earlier liabilities

Practical default example

Rent is K20,000 per month. Twelve months remain. The lease permits re-entry after 14 days' non-payment. A valid forfeiture ends the tenant's estate, but unpaid rent, repair costs and damages for earlier breaches may remain owing.

Possible loss of rent claim

If the landlord reasonably re-lets after three months at K18,000 per month, a claim may include the vacancy loss, the K2,000 monthly shortfall and reasonable re-letting costs, subject to the lease, PNG law, causation and mitigation.

Good conveyancing is disciplined file control

1 • DIARISE

Use Outlook calendar for every step and deadline, with advance reminders. Do not rely on memory.

3 • SCAN EVERYTHING

File every document, receipt and payment record so the file can be reconstructed later.

5 • USE A CHECKLIST

Keep a live checklist in the physical or electronic file so progress and outstanding issues are clear.

2 • GET INSTRUCTIONS

Do not send, settle or sign off figures without client instructions. Keep a record.

4 • FOLLOW PROCEDURE

Never freestyle. Follow the firm's methods, especially safe-custody processes.

A lease documents a grant, and how that grant may end.

For tenant lawyers: the exclusion clause may remove statutory protections, while the default clause reintroduces stronger lessor rights on a much shorter timetable.

Appendix: registration provisions (verbatim extracts)

Section 17(1) and (4)

(1) Subject to Subsection (4), an instrument is not effective to pass or create an estate or interest until the instrument is registered in accordance with this Act.

(4) Subsection (1) does not apply to a lease for a term of three years or less.

Section 49(1) and (2)

(1) Where a proprietor intends to lease land for a life or lives or for a term of years exceeding three years he shall execute a lease in the approved form, and the lease shall be registered.

(2) Where a lease for a term of three years or less is executed in the approved form, the lease may be registered.

Appendix: section 50—powers of lessor (verbatim)

Section 50(a)

The following powers are, by virtue of this Act, implied in a lease, in favour of the lessor:—

(a) that he may by himself or his agents at all reasonable times enter on the demised property and view the state of repair of the demised property, and may serve on the lessee or leave at his last or usual place of abode in the country or on the demised property a written notice of any defect, requiring him within a reasonable time, specified in the notice, to repair the property;

Section 50(b)

(b) that in case the rent or part of the rent is in arrear for a period of six calendar months, or in case default is made in the fulfilment of a covenant whether expressed or implied in the lease on the part of the lessee and is continued for a period of six calendar months, or in case the repairs required by the notice are not completed within the time specified in the notice, the lessor may re-enter on and take possession of the demised property.

Appendix: section 51—lessee covenants (verbatim)

Section 51(1)

Subject to Subsection (2), the following covenants are, by virtue of this Act, implied in a lease against the lessee:—

(a) that he will pay the rent reserved by the lease at the times specified in the lease and will pay all rates and taxes which are payable in respect of the demised property during the continuance of the lease;

(b) that he will keep and yield up the demised property in good and tenantable repair.

Section 51(2)

Where a building erected on demised property under this Act is destroyed by fire, storm, flood or tempest, or otherwise by the act of God and without default on the part of the lessee, then, unless the lease stipulates otherwise, the covenants implied by virtue of Subsection (1) are suspended until the lessor has reinstated the building in good and tenantable repair.

Appendix: assignment and reversion (verbatim extracts)

Section 55(1) and (4)

- (1) A registered lease may be transferred by instrument in the approved form.
- (4) On registration of a transfer of a lease—
- (a) the estate of the transferor, as specified in the transfer, with all rights, powers and privileges belonging to that estate passes to and vests in the transferee; and
 - (b) the transferee becomes subject to and liable for the same requirements and liabilities to which he would have been subject and liable if he had been named originally in the lease as the lessee.

Section 59

- Where a lease is noted by memorial on a certificate of title the person named in the certificate of title as seised of the land described in the certificate—
- (a) is seised of the reversion expectant on the lease; and
 - (b) has all powers, rights and remedies to which a reversioner is by law entitled; and
 - (c) is subject to all the covenants and conditions in the lease to be performed and observed by or on the part of the lessor.

Appendix: re-entry and the carve-out (verbatim)

Section 60

(1) The Registrar, on proof to his satisfaction of—

- (a) re-entry by the lessor under a power implied by this Act; or
 - (b) recovery of possession by the lessor by proceeding in law,
- shall register the re-entry.

(2) When registration is effected the estate of the lessee in the land is extinguished.

(3) The determination of the lessee's estate by virtue of Subsection (2) does not release him from his liability in respect of the breach of a covenant expressed or implied in the lease.

Sections 99 and 100

99(1) A covenant implied by this Act has the same force and effect and may be enforced in the same manner as if it had been set out fully in the instrument in which it is implied.

99(2) Notwithstanding any law or practice to the contrary in an action for breach of a covenant implied by this Act in an instrument it may be alleged that the party against whom the action is brought did so covenant precisely in the same manner as if the covenant had been set out fully in the instrument.

100. A covenant or power implied by this Act may be negated or modified by express declaration contained in the instrument or endorsed on the instrument.