

Commercial Property

Property is property, but commercial property is not the same as residential property! Whilst the steps involved in purchasing or selling commercial property is similar to residential, the considerations can be quite different and specific legal advice might be necessary.

Often additional complexities may arise including:

- The size of the transaction;
- Special terms and conditions;
- Longer settlement terms;
- Redevelopment potential;
- Zoning and planning restrictions;
- GST and other implications; and
- Commercial / retail leases.

Please contact us and give us detailed instructions before you buy or sell commercial property.

Does the use of the Property matter?

YES! A transaction involving a restaurant is not the same as that involving a commercial office and it is not the same as a dry cleaner. Irrespective of whether there is a business currently occupying the premises and whether that lease is a commercial one or a retail one, you need to ensure that you seek legal advice before entering into the transaction.

Disclosures & advertising – the Seller

It is imperative to ensure that the various issues pertaining to the lease and the property are dealt with before you start advertising it. It would be prudent to disclose everything of relevance to the prospective purchaser.

If there is a lease on the property, you should ensure that the Tenant has paid the rent up to date. Furthermore, you should take this opportunity to check that the tenants have complied with their obligations and responsibilities under the Lease. This may include maintaining and servicing the air conditioners and the fire extinguishers.

If the property has been sold, the rights to the lease will need to be assigned to the new owner. Depending on the terms of the lease, the lease can either be assigned or in the alternative a new lease may be drawn up.

Inheriting the Existing Lease – the Buyer

Often commercial properties will have existing leases and will therefore be sold subject to those leases. You may wish to engage solicitors to review the terms of the existing lease for:

- Due diligence;
- Make good provisions;
- Advice regarding rental rebates or incentives;
- Transfer of security deposit; and / or
- Compliance.

A copy of the lease must also be attached to the Contract of Sale.

It is also not uncommon to negotiate a new lease concurrently with the Contract of Sale.

Negotiating the terms

Commercial property transactions usually involve a greater scope for creative negotiation and structuring. Therefore, it is important to have your lawyers and estate agent on the same page. Whether you need special conditions to be imposed to strike the deal or to make allowances to cover the 'what ifs', we will be able to assist you to prepare a contract which suits the needs of your deal.

Consider whether you need to:

- Make special provision for the sum of the deposit, how it is to be held or refunded;
- Adjust for any rental incentives or rebates with the incoming purchaser;
- Make provisions to enable renovation works;
- Prepare tailor made 'subject to' provisions.

Where appropriate, our lawyers can also provide you a quote to prepare Heads of Agreement within 24 hours to enable you to document your agreement as soon as possible.

Deposit & Settlement

The usual deposit is 10% of the purchase price, but this may be subject to agreement between the parties for a commercial transaction depending on the size of the transaction and the time between signing the contract and the date of settlement.

GST and other tax implications

Remember to consider GST! If provisions are not made, the purchaser may be required to pay GST in addition to the purchase price listed in the Contract of Sale. Careful planning and documentation is required to ensure that you are able to justify your transaction to the ATO.

Terms Contract & Vendor Finance

If you are seeking to implement unusual terms of sale, please ensure that you contact our office directly and provide detailed instructions. Our costs structure will vary in respect of Terms Contracts and Vendor Finance and will be charged in accordance with the complexity of the matter and the urgency involved.

Structure of the acquisition

Transactions involving commercial properties may have significant implications in tax and estate planning. If you are unsure about whether the best vehicle for the purchase is in your own name, as a joint tenancy or through your company or family trust, perhaps it is time to get some legal advice. Of course, your accountant should also be consulted for specific questions relating to taxation.

Have you ever thought, if you own the commercial property with another and the other owner dies, there may be a stumbling block to the sale? Depending on whether the commercial property is held as a joint tenancy or as tenants in common, various issues might arise. For example, if the commercial property is held as a joint tenancy and the other owner predeceases you, the ownership of the whole commercial property vests in you. However, if the property is held as tenants in common, probate may need to be obtained and the Executor or the Executrix may need to work with you to sell the property. Be sure to choose the right structure for you!

If you require advice regarding how best to structure your purchase and other commercial affairs please be sure to seek a quotation from our lawyers.

If you are considering buying or selling Commercial Property and wish to obtain additional or specific legal advice, please [contact us](#) for a quote today.