

## SMALL BUSINESS INFO KIT

# 3. TRANSFERRING THE RETAIL LEASE WHEN YOU SELL THE BUSINESS



### Assignment (transfer) of a retail lease

When you sell your business, it is important to use the process set out in the *Retail Leases Act* (the Act) for assigning a retail lease. The tenant (lessee) becomes the **Assignor** of the lease, and the potential new tenant becomes the **Assignee**.

#### This is a brief summary of the steps you must take:

1. Get an updated copy of the **Lessor's Disclosure Statement\***. If an updated disclosure statement has not been given to you during the lease, request one in writing from the landlord. If it is not provided within 14 days\*\*, provide the latest version of the disclosure statement you have (or if none exists, this requirement does not apply to you).
2. Give a copy of the **Assignor's Disclosure Statement\*** to the assignee (and to the landlord at least seven full days before the assignment if you want to be protected from ongoing liability under the lease).
3. Gather all of the following information from the assignee to give to the landlord:
  - a. the assignee's name and contact details;
  - b. documentation to show the assignee's financial standing;
  - c. documents to show the business experience of assignee; and
  - d. a written record of things said by the assignor (you) or the landlord which influenced the assignee to agree to the assignment.
4. Provide information, listed in the dot points above, to the landlord in writing by:

- a. delivering it personally to the landlord or the landlord's agent as set out in the lease;
- b. leaving it at, or posting it to, the last known residential or business address of the landlord in or out of New South Wales.

Further details of how to serve documents are set out in Section 81A of the Act.

The landlord must respond to the request for assignment of the lease within 28 days from the date all the information is received (or the assignment is deemed to have taken place).

The Act only allows the landlord to refuse a request for assignment of a lease in the following five situations:

1. If the use of the shop is to change;
2. If the assignee (new tenant) has less business skills than the proposed assignor (current tenant);
3. If the assignee has less money than the proposed assignor;
4. If you (the assignor) have not complied with the procedure for obtaining consent to the assignment as set out in this document; or
5. If the shop is airside at Sydney (Kingsford-Smith) Airport and the landlord has the right to refuse assignment under Section 80E of the Act.

For further information about the process for an assignment:

#### Office of the NSW Small Business Commissioner

Phone: **1300 795 534**

Email: [we.assist@smallbusiness.nsw.gov.au](mailto:we.assist@smallbusiness.nsw.gov.au)

Website: [www.smallbusiness.nsw.gov.au](http://www.smallbusiness.nsw.gov.au)

The full procedure for obtaining consent to an assignment is set out at section 41 of the *Retail Leases Act*.

#### IN BRIEF

- When you sell your business, it is important to use the process set out in the *Retail Leases Act* (the Act).
- The landlord must respond to the request for assignment of the lease within 28 days from the date all the information is received.

**OFFICE OF THE NSW  
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COMMISSIONER**

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[smallbusiness.nsw.gov.au](http://smallbusiness.nsw.gov.au)

\*Standard forms of these disclosure statements are available online at [www.smallbusiness.nsw.gov.au](http://www.smallbusiness.nsw.gov.au)

\*\*"Days" means calendar days, unless the last day for doing something falls on a Saturday, Sunday or Public Holiday. In that case, the next business day will be the last day.