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Christmas Greetings and welcome to our Property Briefing online, designed to bring you articles of interest in relation to legal issues in property.

This is the first of our quarterly briefings, to be supplemented by alerts from time to time, drawing your attention to legal matters that you should be aware of as you deal with property as an agent, manager, advisor, valuer, landlord, tenant, purchaser, vendor or developer.

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Regards,

Andrew Boer
Principal

NEW RETAIL LEASES DISCLOSURE STATEMENT

The introduction of the new Retail Leases Regulations 2010 looks fairly harmless until you realise that a new form of disclosure statement has been introduced.

The new disclosure statement will be required to be used from 1 January 2011 onwards. For leases where a disclosure statement is required to be given on 31 December 2010 or earlier, the old disclosure statement should be used.

Where can I get the new document?

The document is publicly available and easily accessible via legislation websites or via the Small Business Commissioner's [website](#).

For your convenience, you can click [here](#) to access an auto-formatted version of the new disclosure statement that is easy to use and adapt for your purposes.

Some things are the same

Importantly, the \$1m annual occupancy cost threshold still applies, as do the other exemptions from the Retail Leases Act (like the "listed company exemption"). The new disclosure statement will still be required to be provided to retail tenants upon a new lease being entered, upon assignment and upon renewal.

Some things are new

If you thought that the old disclosure statement asked for a lot of information, then you haven't seen anything yet. The significant changes to the disclosure statement can be summarised as follows:

1. The statement anticipates the attachment of a plan of the premises, where available.
2. A much easier "tick the box" approach is adopted in many parts. This will hopefully do away with the practice of landlords and agents of leaving parts of the document with a "Yes / No" remaining in the form - that was never very helpful.

3. The statement contains a warning to tenants to investigate whether the proposed use, specified in the lease is permitted under planning laws.
4. For a retail sublease, the landlord must now disclose details of the relevant head lease, including requirements for owner's consent, length of the head lease term and options available.
5. The statement requires explicit disclosure of periods that will be rent-free and periods that will be outgoings-free. This will help to dispel the myth that "rent-free" means "no cost".
6. Many parts of the statements require cross-references to clause numbers in the lease, something that might prove problematic if the disclosure statement is being provided at the time of signing an Agreement for Lease with only a draft lease attached.
7. The statement contains a list of questions that the tenant should consider prior to signing the lease, including a suggestion that the tenant should obtain financial and legal advice.

What should I do?

Download the form and get it onto your system. Get ready for the disclosure of more retail lease information than ever before. If you are regularly issuing disclosure statements, get your information in order so that you are ready to go on 1 January 2011.

Don't get caught using the old form after 1 January 2011 - it will usually give rise to a tenant's rights to terminate a lease or at least excuse themselves from liability for rent until a disclosure statement is provided. No one wants to be the person responsible for lost rent.

Watch out for lazy landlords or agents using the old form after 1 January 2011. If you're a tenant, insist on getting the new form. If you're a landlord, make sure your agents are ready for the transition.

If you're not sure - get advice. Good advice is better than a good insurance policy. Good advisors will listen to your questions and answer them in a professional and timely manner.

The Moores Legal Property Law Team

For further advice and guidance on any property issue and how it may impact your business and commercial operations, contact the Property team at Moores Legal.

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DISCLAIMER: This Property Briefing is of a general nature only. Specific legal advice should be sought rather than relying on this Briefing.

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