



P.M. Lee & Co Newsletter Property & Business Lawyers

Celebrating 31 years of practice in 2016



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Welcome to the August 2016 edition of our newsletter for business owners and investors.

This edition focuses on retail leases and the obligations of being a landlord, franchising, enduring powers of attorney and discretionary trusts.

*We would also like to warmly welcome Nicole Nolan to the firm. Nicole is an experienced property and wills lawyer who you will be hearing more from soon.
Regards, Peter Lee*

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Discretionary Trusts are they right for you?

Welcome to Nicole Nolan

Nicole is an experienced lawyer who the last 4 years worked for a large national charity looking after their retail and commercial property including the leasing arrangements for 92 stores. Prior to that Nicole worked for the Public Trustee for a number of years in their deceased estate section looking after disputes about Wills, disappointed beneficiary claims and capacity issues.

Nicole's skill lies in her ability to quickly analyse issues, apply the law and provide meaningful advice to her clients. Nicole is in her final year of a Masters of Law majoring in Property Law.



What you need to know about Buying a Franchise

1. Buying a franchise, can be a great way to launch an entrepreneurial career with the support an existing business structure. Australians are avid franchisees and it is a business structure that is well regulated by the Franchising Code of Conduct.
2. As with any new business venture, it's important that you perform due diligence before signing up as a franchisee. Due Diligence is when you and Peter Lee review the franchise agreement and the disclosure document. Peter will work with your Accountant to make sure that the business model works from a cash flow and profit and loss perspective. Perhaps most importantly, Peter can help you make sure you're not entering into a contractual arrangement that heavily favours the franchisor.
3. The two main documents that you and Peter will need to review are the franchise agreement and the disclosure document. These two documents set out all the terms under which you will be entering into the franchise, including all the payments required.
4. If you're purchasing a franchise from an existing franchisee you will also need to have the sale of business agreement reviewed. This isn't necessary if you're purchasing a new franchise from a franchisor.
5. Finally, if the franchise you are purchasing is based in a commercial space you may also need to negotiate a commercial lease or arrange the transfer of an existing lease. Peter can review the lease to ensure it is fair for you and similar to other leases and that you understand the lease.

P.M. Lee & Co are well placed to assist you with all your franchising needs, Peter has worked with many franchisees to successfully purchase their new business. Nicole Nolan has extensive leasing experience having worked for a national retailing charity.

'Enduring Powers of Attorney'

There can be tragic results for families if loved ones do not have this essential document.

An 'Enduring Power of Attorney' is a legal document in which you can appoint people to make decisions for you if you ever lose the ability to do so yourself. This can be caused by adverse life events such as a medical condition or an accident, which can strike at any age. The person appointed will be able to deal with your property and make important life decisions for you. You should only appoint someone in whom you have absolute trust and confidence.

If you have not made an 'Enduring Power of Attorney', and you lose the capacity to make of your own financial decisions, then no one is entitled to make those decisions for you. Not even your partner, your parents or your children.

Therefore it is important that you prepare an Enduring Power of Attorney. This means that your close family can look after your affairs if you can't.

P.M. Lee & Co are able to help you prepare an Enduring Power of Attorney.

Landlord's guide to retail leasing in Queensland

In Queensland, all retail leases are regulated by the *Retail Shop Leases Act 1994* (the Act) for example a café lease is regulated by the Act but an office lease isn't. Here is PM Lee & Co's explanation of the key parts of this legislation to help you enforce your rights as landlords when retail leasing in Queensland.

Legal and financial advice reports

Tenants with fewer than five retail businesses must get a legal advice report and a financial advice report before signing a lease. This means tenant is required to meet with a leasing lawyer to receive advice on the terms and conditions of the lease. These documents must be handed to you before the lease begins.

The disclosure requirements to finalise a retail lease

You are required to provide the tenant a disclosure statement about the lease and a draft copy of the lease. The disclosure documents provides a summary of the lease information. You are required to give the tenant this statement at least seven days before the lease agreement is finalised. If you fail to do so, the tenant may be allowed to terminate the lease.

Tenants also provide a disclosure statement. This statement must contain information about the tenant's background in business. This statement also allows us to record details of any representations made by you to the tenant. If the tenant provides misleading or false information on this statement they maybe required to pay you compensation for any loss you suffer as a result of these misrepresentations.

Key terms in a commercial retail lease

Permitted use – this term is crucial because it specifies what types of business can and cannot be operated at the premises. Make sure you specify the exact type of business you want trading in the centre. So you can maintain a tenancy mix that complements each other.

Key Money – under Queensland legislation you are not allowed to accept or seek payment of key money, which is 'good-will' money paid by the tenant for renewing, granting or assigning a lease.

Market Rent – if you and the tenant cannot agree on the rent for the premises, a specialist rent valuer can be brought in to determine market rent.

Outgoings – outgoings in a lease are the operating costs associated with the premises. The lease will usually require the tenant to contribute to these outgoings. This includes insurance, electricity, local authority rates and centre management rates. Under Queensland law, if a tenant is required to pay outgoings the lease must specify:

- how and which particular expenses will be regarded as outgoings
 - how these expenses will be apportioned between the parties
- how the landlord will recover these expenses

There are a great many expenses that you can recover (and many that can't) so good legal advice is essential.

PM Lee & Co we can help you ensure you do not fall foul of the Retail Shop Leasing Act and suffer any loss as a result of not complying with the Act.

What is a discretionary trust?

There are many advantages to establishing a **discretionary trust**. They allow you to control an asset whilst keeping it safe from claims as well as providing tax benefits. This article provides an overview of how a discretionary trust works and whether or not you should consider establishing one.

What is a trust?

A trust arises when one person (or company) holds property as legal owner, but the beneficial ownership rests with others (the beneficiaries).

What is a discretionary trust?

A discretionary trust is a trust where the trustee has the discretion as to how to distribute the income and capital of the trust. The exercise of the trustee's discretion is governed by the terms of the trust deed of the trust.

Why should a person establish a discretionary trust?

A discretionary trust has a number of advantages that make it a popular legal structure. A discretionary trust allows:

- for flexibility in distributing income and capital of the trust
- tax minimisation as income of the trust can be distributed to beneficiaries of the trust on lower marginal rates of tax, thereby reducing the tax payable overall by the beneficiary
- asset protection from creditors
- controlling assets across generation
- capital gains tax concessions are available, and
- it is an appropriate structure as an investment vehicle and trading entity (e.g. for running a business).

Conclusion

A discretionary trust may appear complex however, there are potentially significant benefits to establishing this trust structure. If you want more information about establishing a discretionary trust, Peter Lee can provide you with legal advice on whether or not a trust structure is right for you.

ABOUT P.M. LEE & Co.



Peter Lee, Principal

Since 1985 we have provided legal services to some of Brisbane's largest corporations, small and medium business and valued individuals.

Our firm has built a solid reputation as experts in property law and business law.



Graham Knight, Senior Associate

We have a deep understanding of body corporate and leasing, franchise law, business transfer, taxation as well as acquisition and conveyancing.

Our firm is well known in litigation, debt recovery and family law.



Nicole Nolan, Solicitor

Estate planning is essential for everyone with a family, or assets. Clients trust P.M. Lee & Co. for their sound advice in wills, power of attorney and family trusts.