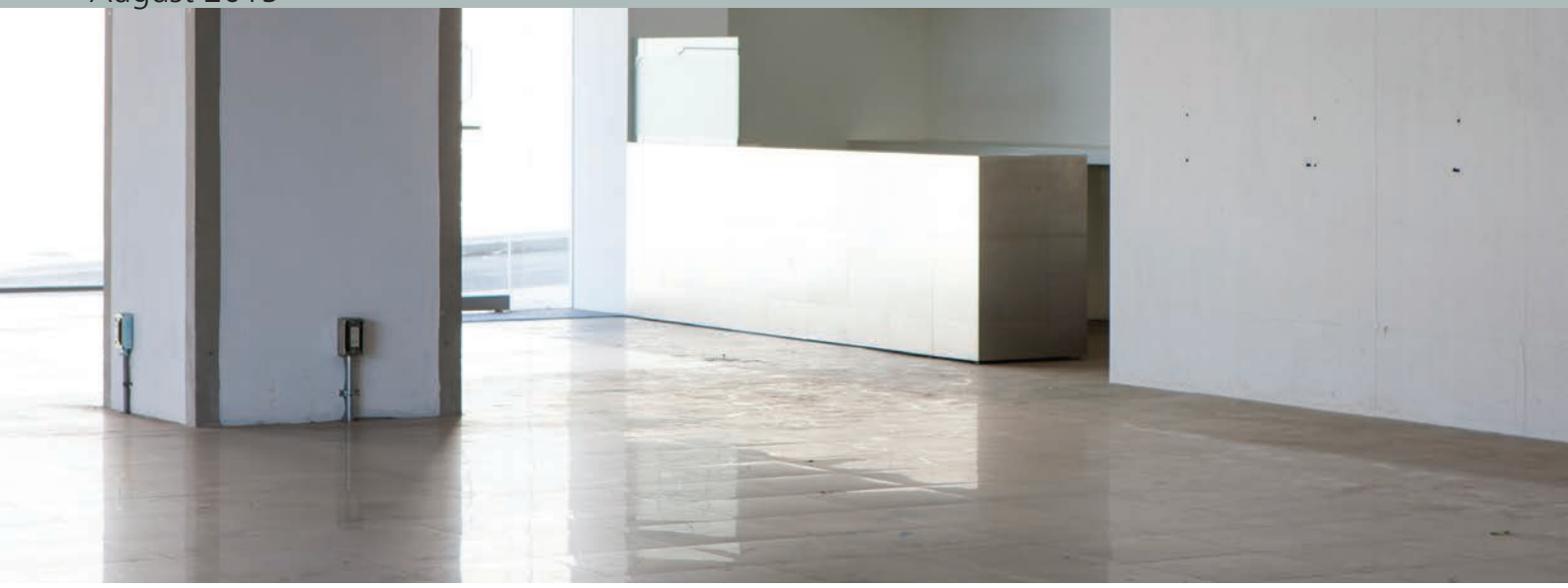
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Property Law Update

August 2015



Make good clauses in leases

Most brokers and freight forwarders lease the premises from which they operate their business. Changing premises can be an exciting time and you will no doubt be focused on the new premises rather than the one you are leaving. Below we set out your obligations in respect of your old premises when ending a lease and what to keep in mind when negotiating a new lease.

WHAT IS A "MAKE GOOD" CLAUSE?

All lease agreements specify what the tenant must do to "make good" the premises at the end of the lease.

Because landlords and tenants are often eager to conclude a lease agreement, many don't consider fully what is to happen at the end of the lease.

A simple make good clause will require the tenant to remove their property, repair any damage in so doing and leave the premises clean and tidy.

But many make good clauses require the tenant to return the premises to the condition it was in at the start of the lease, or to "base building configuration".

Many make good clauses require the tenant to repaint and recarpet the premises at the end of the tenancy even if those tasks are not required.

PROBLEMS WITH MAKE GOOD CLAUSES

If one of the parties does not keep a record of the condition of the property at the start of the lease, disputes can arise about what is required to return the premises to the base building configuration or the required condition under the lease. As well, if tenants and landlords have both made alterations to the premises, disputes can arise over what each party owns and has to remove.

The cost to return office premises, for example, to base building configuration including removal of false ceilings, reconfiguring fire sprinklers, power outlets, air conditioning ducts, alarm systems and the like, as calculated by fit out contractors, can be very significant.

For industrial premises, frequent disputes arise over:

(a) the reinstatement of floors after removal of racking. Should the bolts just be cut off flush with the surface, or drilled out and replaced with an appropriate product consistent with the floor finish; and

(b) the repair of floor and hardstand areas through "excessive repetitions" by forklifts or other vehicles exceeding the floor's engineering specifications (which may or may not have been communicated to the tenant at the start of the lease).

AVOIDING PROBLEMS

Avoiding the pitfalls of make good obligations requires parties to carefully consider and document fully their obligations when negotiating leases. Landlords and tenants should discuss their expectations with their lawyers so that clear and accurate clauses can be drafted appropriately.

The better make good clauses reference schedules which include accurate descriptions of plant and equipment in the premises, who owns them and what is to be done with them at the end of the lease. If a return to base building configuration is to apply then plans and specifications of that configuration are attached to the lease so that both parties know exactly what is expected.

As well we recommend that both parties arrange for a condition report of the premises including photographs at the commencement of the lease and for any tenant or landlord fitout.

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ABOUT OUR PROPERTY TEAM

With experts in property acquisition, environment & planning, project financing, building & construction and commercial leasing, we are able to offer clients an integrated service from project inception through to completion and ongoing management. Many of the property transactions and matters that we have been involved in are significant in terms of value, complexity and strategic importance or potential risk exposure – we understand the importance of strategic and creative thinking, excellent project management and timeliness in progressing and completing property projects.

Our experience in advising all types of property sector stakeholders – including corporate and institutional owners, rural landholders, property developers, mortgage financiers, private client owners, resort/hotel owners and government agencies – provides us with real insights of different perspectives and drivers, enabling us to assist in negotiating the optimal outcome for our clients.

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