

FACTS SHEET – September 2002

Leasing your premises – tenants beware

One of the most important facets of your business is how and where you locate. Because it is so important, it can be a valuable component of your Goodwill should you decide to sell your business. So do you look after it?

Have you checked your lease lately? Do you understand what it means?

Consider the experience of a business tenant in a northern Sydney shopping centre**. Carol M bought her business for about \$200,000 in 1996 on a three year lease. Under her control, the business thrived.

In early 2001 a buyer approached Carol and offered her \$400,000. But when Carol approached the landlord asking to renew the lease the response was NO.

Carol advised the landlord that if she renews her lease on a “four plus four” year basis then she could sell.

The landlord offered her \$100,000 “to get out quietly” then prepared to carry on Carol’s type of business in the shop under another name. The landlord previously did this with another business victim, operating that shop for about a year before selling it and effectively walking away with the business victim’s goodwill.

Unfortunately, the landlord may well be operating legally and simply taking advantage of tenants who succeed in their business but who are inexperienced with regards to their lease negotiation.

Some business owners depend on the eventual sale of their business for their superannuation. Yet, if their lease has run out and they are operating on a month to month basis (and a lot of businesses do operate in that fashion) their goodwill may be entirely lost.

Consider the following before you enter or renew your lease:

- ↳ Has your solicitor reviewed it?
- ↳ Consider obtaining an option for a further lease at the expiry of the lease period eg a five plus five with an option for another five plus five.
- ↳ Consider having the right to sublease in the lease. What happens if your business is growing and you have no room to grow?
- ↳ Ensure you understand how the annual rent review is calculated.

↳ Understand whether or not the rent is inclusive or exclusive of outgoings. It is usually better to lease on the basis of gross rental which includes all outgoings because you will at least know what your expenditure is going to be. Interestingly, few business owners know precisely how much rent they pay.

If you have any queries relating to the value of your goodwill in your business, please contact us.

Important: *The information contained in this Facts Sheet is not advice. Many of the comments in this Facts Sheet are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances. Also please note that changes to legislation may occur quickly.*

For more information, or if you would like assistance, please contact Farmilo & Co.

Tel (02) 9630 6744
Fax (02) 9890 5862
Email farmilo@ros.com.au

***reported in Sydney Morning Herald 14/6/01.*