



Refusing to Allow the Exercise of an Option to Renew a Lease on the Grounds of Default

While it is common, in commercial leases, to see option to renew provisions which a tenant may only exercise if it is not in default under the terms of the lease, landlords must have regard to the provisions of the Property Law Act 1969 (WA) ("PLA") before refusing to grant an option to renew.

Despite the express provisions of a the lease relating to the exercise of an option, section 83C of the PLA operates to prohibit a landlord from precluding a tenant from exercising an option for the sole reason that a tenant is in breach of its obligations under the lease.

For a landlord to be able to refuse to grant the option, based on a tenant's breach of the lease, the landlord must, within 14 days of a tenant purporting to exercise the option, serve on the tenant a notice which specifies the breach and advises the tenant that the landlord intends to treat the breach as a reason to preclude the tenant from exercising the option.

On receiving such a notice from a landlord, a tenant has one month to seek an order from the Court under section 83D of the PLA to enable it to still exercise the option. Failure to obtain such an order will result in the tenant losing its right to exercise the option.

In an application under section 83D of the PLA:

- (a) the landlord must prove the breaches of the lease set out in its notice; and
- (b) the tenant must demonstrate to the Court that the Court should exercise its discretion to relieve against forfeiture, in its favour.

In considering a tenant's request for relief under section 83D, the Court may take into consideration:

- (a) the nature of the breach complained of;
- (b) the extent to which the landlord was prejudiced by the breach;
- (c) the conduct of the parties, including the conduct of the parties after the issue of the landlord's notice under section 83C;





- (d) the rights of third parties; and
- (e) any other circumstances considered by the Court to be relevant.

The lease will continue in force until the issue is decided – either by a party failing to comply with the provisions or timeframes of the PLA; by agreement between the parties; or by the Court.

This form of statutory relief is not available in all Australian jurisdictions - only Queensland and New South Wales have similar provisions.

For more information please contact



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