

QUICK GUIDE TO GIVING DISCLOSURE UNDER THE RETAIL SHOP LEASES ACT

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Question: How can an owner give disclosure under the Retail Shop Leases Act? Is disclosure by email effective?

Answer: Disclosure can be given by hand delivery, post, fax, and, in certain circumstances, email. An owner must comply with additional requirements for disclosure by email to be effective.

WHAT ARE AN OWNER'S OBLIGATIONS REGARDING DISCLOSURE?

The Retail Shop Leases Act (Act) requires an owner to give a tenant a disclosure statement and a draft lease (disclosure documents) at least 7 days before the tenant enters into a retail shop lease. A tenant 'enters into' a lease when it takes possession or is bound by the lease (whichever is earlier).

The Act also requires an owner to give an assignee the disclosure documents at least 7 days before entering an assignment of a retail shop lease. An assignment of a lease is 'entered into' when an owner consents to the assignment.

Consequences attach for a failure to give the tenant or assignee the disclosure documents.

HOW CAN AN OWNER GIVE THE TENANT DISCLOSURE DOCUMENTS?

For tenants that are individuals, disclosure may be given:

- by hand delivery - to the tenant personally; or leaving the disclosure documents at the last known residential or business address of the tenant; or
- by post - posting the disclosure documents to the last known residential or business address of the tenant; or

- by fax - faxing the disclosure documents to the tenant's fax number, provided the tenant has supplied a fax number to the owner for that purpose.

For tenants that are companies, disclosure may be given:

- by hand delivery - to the company's director; or leaving the disclosure documents at the head, registered or principal office of the company; or
- by post - posting the disclosure documents to the head, registered or principal office of the company or most recent address lodged with ASIC of the liquidator or administrator, if one is appointed; or
- by fax - faxing the disclosure documents to the tenant's fax number, provided the tenant has supplied a fax number to the owner for that purpose.

WHAT ABOUT GIVING DISCLOSURE BY EMAIL?

The *Electronic Transactions Act* allows an owner to give disclosure documents via email if:

1. the owner uses a reliable electronic form of the disclosure documents and ensures that the integrity of the disclosure documents are maintained; and
2. the electronic form of the disclosure documents are readily accessible; and
3. the tenant has consented to the disclosure documents being given electronically.

Points 1 and 2 can be achieved by using programs such as Adobe to create PDF documents. Point 3 is a little more difficult as case law suggests that consent should be obtained before the disclosure documents are emailed. We recommend that you include an appropriate condition in your standard offer to lease which states that the tenant consents to disclosure being given by email.

If an electronic signature is used a method must be adopted that identifies both the person signing and their approval of the information to be communicated. The method must also be reliable and the tenant must consent to using this method.

WHEN WILL DISCLOSURE DOCUMENTS BE DEEMED TO HAVE BEEN GIVEN?

An owner has effectively given the disclosure documents when:

- by hand delivery - the documents are handed over to a tenant or left at the appropriate address;
- by post - the documents are delivered in the ordinary course of the post (no set time but a minimum of 2 business days after posting should be allowed, longer for tenants outside Queensland);
- by facsimile - the documents are received by a tenant's fax machine; or
- by email - when the email enters the designated information system of a tenant.

SOME PRACTICAL TIPS

In the event of a dispute, the onus is on you to provide evidence that the disclosure documents were effectively given to a tenant. Here's our top 5 recommendations:

5. Make a contemporaneous file note of the time and date that the documents are personally delivered and (if applicable) the name of the person who received them;

4. Take a copy of documents that are posted (including any cover letter) and keep a record the date they were posted. If timelines are tight, consider sending by registered post and requesting a delivery confirmation from Australia Post;

3. Set up your fax machine to print out delivery confirmation reports and check the report shows “ok”;

2. Set up your email so that you receive ‘delivered’ and ‘read’ receipts.

1. Keep a paper trail (or a virtual paper trail if you operate a paperless office). Make sure you keep your file notes, delivery confirmation reports and receipts on your correspondence file so that you can readily produce evidence of when the disclosure documents were delivered.

For more information on this topic, please contact [Cameron Graham](#).