

Schedule 2A: Assignor's Disclosure Statement

Who should receive this form?

This statement is to be provided to the lessor (landlord) when a lessee (tenant) is requesting the lessor to consent to the assignment (transfer) of a lease. A copy should also be given to the assignee (proposed new tenant).

The purpose of this form

The purpose of this form is to assure the lessor that the assignee has been made aware of the information specified as necessary for the assignment process, as set out in Section 41 of the Retail Leases Act 1994 (see also Note 3 on page 2).

Who is the assignee and the assignor?

When a lease is being transferred, the current lessee (tenant) is the "assignor" and the proposed new lessee (new tenant) is the "assignee".

Consenting to or rejecting the assignment

The lessor may take up to 28 days to consent to, or reject, the assignment of the lease once the lessor receives all the information referred to in this disclosure statement in (a) - (d). If the lessor does not respond in this period, the assignment is deemed to have been consented to (see also Note 1).

The assignor certifies and the assignee acknowledges that:

- 1 The assignee has been given, by the assignor, the updated Lessor's Disclosure Statement or a Lessor's Disclosure Statement completed by the lessee to the best of the lessee's knowledge (with information on current outgoings in place of estimated outgoings).
- 2 The assignee has been advised that
 - there **are no** outstanding notices in respect of the lease (e.g. directions from the landlord or council with which the lessor has not yet complied)
 - there **are** outstanding notices in respect of the lease.
- 3 The assignee has been advised that
 - there **are no** outstanding notices from any authority in respect of the retail shop
 - there **are** outstanding notices from any authority in respect of the retail shop.
- 4 The assignee has been advised that
 - there **are no** encumbrances on fixtures and fittings within the retail shop
 - there **are** encumbrances on fixtures and fittings within the retail shop.
- 5 The assignee has been advised that
 - there **are no** encumbrances (lease or debt to someone else) on the lease
 - there **are** encumbrances on the lease.
- 6 The assignee has been advised that any rent concessions or benefits available to the assignor during the term of the lease
 - have not** been conferred (given) by the lessor
 - have** been conferred by the lessor. List below the concessions or benefits that have already been conferred on the assignor.

Details of outstanding notices/encumbrances:

Transferring a lease

When transferring a lease to a new tenant, the following documents are required by law:

- ▶ The lease
- ▶ Lessor's Disclosure Statement
- ▶ Lessee's Disclosure Statement
- ▶ Assignor's Disclosure Statement (only required if the lessee wants to assign the lease to a new tenant).

Note 1: About the process

Information set out in (a) - (d) on page 2 is delivered to the lessor.



A 28-day time period begins from the time the information is delivered. The lessor has 28 days to consent to or reject the assignment of the lease.



Seven days (or longer) before the 28-day time period is up, the Assignor's Disclosure Statement must be given to the lessor.



Lessor responds within 28 days, accepts or rejects assignment.



Lessor does not respond within 28 days, the assignment is deemed to have been consented to.

Note 2: Providing information to the lessor

1. Personal delivery
2. Leaving it at or posting it to the last known residential or business address – in or out of New South Wales – of the person to be served
3. Or in any other manner referred to in Section 81A of the Retail Leases Act

- 7 The assignee has been given by the assignor the sales figures and relevant information as to the trading performance of the retail shop for the past three years or for such period as the lease has been in operation if that period is less than three years. The total (aggregate) sales figure for the past three years, or such lesser period as the lease has been in operation, is as follows:

- a) period/year _____ \$ _____
 b) period/year _____ \$ _____
 c) period/year _____ \$ _____

Information the lessor will require (see also Note 2):

In seeking consent to assignment, the assignor has provided the following information to the lessor about the assignee:

- Details of the assignee
- Documentation showing the financial standing of the assignee
- Business experience of assignee
- Written record of statements (things said) by the assignor or the lessor which influenced the assignee to enter the assignment

I certify that I have provided the assignee with the information as set out above (1) - (7) and an updated lessor's disclosure statement.

 Assignor's signature

 Date

 Name (printed)

I acknowledge receipt of the information as set out in (1) - (7) and an updated lessor's disclosure statement.

 Assignee's signature

 Date

 Name (printed)

Note 3: The importance of the assignment documents

When a lessor agrees to assign a lease to a new lessee AND a completed Assignor's Disclosure Statement is given to both the lessor and assignee seven days before the assignment takes place, the financial responsibilities under that lease are passed to the new lessee.

When requesting the lessor to agree to the assignment, provide the information set out in (a) to (d).

Best Practice Tip

There are many time frames to consider when assigning a lease. For best practice, and to avoid delays, we recommend you, the tenant/assignor, write to the lessor (landlord) and do all of the following:

- ▶ Request the lessor's consent to assignment
- ▶ Request an updated lessor's disclosure statement
- ▶ Provide details of the assignee
- ▶ Attach documentation showing the financial standing of the assignee
- ▶ Provide details of the business experience of the assignee, and
- ▶ Provide any written records of statements by the assignor/lessor which influenced the assignee to enter into the assignment (if appropriate).

The 28 day period for consenting to or rejecting the assignment begins when the lessor receives this letter.

The Dispute Resolution Unit (DRU) in the Office of the NSW Small Business Commissioner provides advice and mediation services for disputes between the tenants and landlords of retail shop leases. To contact the DRU, phone: 1300 795 534 or email: we.assist@smallbusiness.nsw.gov.au

**OFFICE OF THE NSW
 SMALL BUSINESS
 COMMISSIONER**

1300 795 534

smallbusiness.nsw.gov.au