**Commercial Property Management**

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**Commercial Property Management**

# Introduction:

Welcome to the Commercial Property Management manual of procedures. This guide will explain the role of the commercial manager. This manual is a guide and a living document updated when we change our procedures to reflect our business practice and any changes in legislation and compliance.

**The Commercial Property Manager:**

Our role in commercial property management is dynamic. There are key areas to ensure that the commercial asset our investor owners have entrusted our team with is managed with due care, diligence and skill. Our roles extend to:

1. Compliance and Accountability
2. Financial Management
3. Arranging Insurance Valuations
4. Arranging Maintenance and appropriate, suitably qualified contractors.
5. Facilities Management
6. Reporting
7. Marketing of property for lease
8. Leasing Agreements.
9. Renewals
10. Rent Reviews
11. Dispute Resolution

The role of a commercial property manager is based on an arrangement between the owner of the commercial building and the tenant/s. That arrangement is called a lease and a document called a *Deed of Lease* must be in place. The landlord is known as the *Lessor* and the tenant as the *Lessee.* At times an Agreement to Lease may be in place but while this document would cover the basics, it is not as robust as a Deed of Lease. We aim to ensure that for every property we manage, a Deed of Lease is in place.

Commercial property management differs from residential property management in many ways. Residential property is property that is used or is intended to be used for residential purposes. We all relate to residential property as flats, apartments, townhouses or stand-alone houses.

Commercial property on the other hand is property for non-residential use. Commercial property may have for example, offices and retail shops. Many businesses rent commercial property rather than own a property.

While the general outcome is to ensure that rent is received on time and that the commercial property manager is a good steward for the building while at the same time maintaining excellent relationships with the owner and the tenants, there are a number of key and important differences.

The following manual is a guide to commercial property management. The manual explains the aspects of commercial leasing and underpins our company’s way of client care . This manual together with the Agreement for Commercial Leasing Services document (the service agreement for a commercial property manager and the owner), the Checklist for Commercial Property Management and understanding the Property Law Act 2007 that governs Commercial Leasing arrangements, will provide enough basic information for the purposes of becoming a commercial property manager.

Additionally, it is critically important to hire the right person who is skilled in commercial property management. Further, we have the right tools including a dedicated commercial leasing software system. The right person with the right tools, with an understanding of the legal implications and market opportunity form the basis of success in commercial property management.

# Background:

Commercial leasing is performed by a commercial leasing agent and not by a commercial property manager. Sometimes, the owner may have secured their own tenant and had the assistance of their solicitor to draw up a Deed of Lease. A Deed of Lease is typically an Auckland District Law Society (ADLS) Agreement to Lease (see example).

It is important to rely on expert help to assist the owner of the commercial building to find the right tenant. A commercial leasing agent who has expertise to assist the owner to find the best tenant at best commercial market rates is an invaluable resource to the commercial property management team.

# Commercial Property Manager’s Role:

It is important to know the distinction between commercial leasing, residential property management and commercial property management. There are times that the commercial leasing and commercial property management may cross over particularly at the time of lease renewal and access to property. Clarity around the role of the commercial property manager is therefore vital.

In this regard, the first thing that the commercial property manager should do is familiarise themselves with the Service Agreement or Management Authority in place with the owner of the building. The service agreement provides detail of what the commercial manager will do. The service agreement also distinguishes between day-to-day commercial property management and any additional tasks that the owner would pay for above and beyond the service fee.

Fundamentally, the role of the commercial property manager is to assist the owner to be a good steward of the commercial building, to collect the rent and outgoings, to liaise with the tenants and to ensure that service providers that are hired are doing what they are supposed to under the various service agreements.

The following explains the people that would be involved in commercial management of buildings:

## Commercial Leasing Agent:

* Engaged to find a suitable tenant at best market rent for the landlord.
* Negotiates lease terms.
* Draws up the heads of agreement between the landlord and the tenant.
* Can draw up the commercial lease agreement and encourage the other party to seek their own legal advice on the contents.
* Collects the fee for placement of the lease and any advanced rent (typically, two months) from the tenant.

## Anti Money Laundering Requirements for the Commercial Leasing Agent:

The commercial leasing agent’s activities are governed by the REAA. Further, the leasing agent has an obligation (from 1 January 2019) to ensure that all clients are qualified as to their identity under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act. It is important that any new client that we obtain follows the AML/CFT requirements we have in our office. A basic understanding for the commercial property manager about this new legislation is as follows and more information were the extract is taken from is available at:

https://www.dia.govt.nz/diawebsite.nsf/Files/AML-CFT-Real-Estate-Guideline/$file/AML-CFT-Real-Estate-Guideline-Dec-2018.pdf

Money laundering is the method by which people disguise and conceal the proceeds of crime and protect and enjoy their assets. Some people in New Zealand may also be financing terrorism using similar techniques to money launderers to avoid detection by authorities and to protect the identity of those providing and receiving the funds. People with criminal intentions value anonymity and are looking for ways to distance themselves from their activities while still enjoying the proceeds of their crime.

The real estate, legal, conveyancing, accounting, and trust and company service provider sectors are known as gatekeepers. They provide services and products that can be used as a vehicle for illegal funds entering a legitimate financial system. Both domestic and international evidence suggests that using gatekeepers, such as real estate agents, is a way for criminals to create a false perception of legitimately acquired wealth.

The recent changes to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the AML/CFT Act” or “the Act”) now include real estate agents in the AML/CFT system. The AML/CFT Act is activities-based and real estate agency work (within the meaning of section 4(1) of
the Real Estate Agents Act 2008) is one of the covered activities. Managing client funds (other than sums paid as fees for professional services), accounts, securities or other assets is another of the covered activities.

Real estate agents who undertake real estate agency work and/or manage client funds, accounts, securities or other assets will need to undertake an assessment of their money laundering and terrorist financing (ML/ TF) risk. They will also need to develop a programme to ensure they comply with the requirements in the Act.

The basic premise is that real estate agents need to know their clients and conduct customer due diligence (CDD) according to the level of risk posed by the clients. CDD is not optional. Your company should have a process for the AML requirements and the commercial leasing agent will have to comply with these so that each owner of a building is qualified as per those requirements.

## Solicitor:

* Will draw up the Deed of Lease acting for the landlord if not drawn up by the Commercial Leasing Agent. Tenants may also have solicitors acting on their behalf and they should be encouraged to have their solicitor check the details as a Deed of Lease is an important legal document.
* Handles disputes as they escalate. Important for debt recovery, lease terminations, re-entry to premises and recovery from tenant once options exhausted by the commercial property manager.

## Landlord who is known as the Lessor:

Is responsible for the building and ensuring it is structurally sound for its occupants.

## Tenant who is known as the Lessee:

* Must observe the terms of the lease to pay rent and any outgoings.
* The tenant must ensure that they keep the property in good repair during the time of their tenancy and following its expiry to observe the reinstatement provisions in the lease documentation.

## Commercial property manager:

* An appointee of the Landlord/Lessor.
* The commercial property manages the lease and the obligations of the landlord and tenant.
* The commercial property manager manages the relationship between the tenant and the landlord.
* The commercial property manager also collects the rent and takes care of maintenance at the building together with any issues that arise from time to time.

# The Basics of a Commercial Lease:

The following describes the basics of commercial leasing being important for a commercial property manager’s understanding:

## Tenant Types:

A commercial tenant can be an individual (person), a company, partnership or a trust.

## Types of Commercial Tenancies:

Commercial premises will usually be leased for a fixed term with or without rights of renewal. A right of renewal means that the lease can be extended for a further period of time. Sometimes, depending on the circumstances, commercial premises may be leased on a month by month basis but there are some risks associated with month by months the main one being security of a tenant for the owner. However, a month-by-month may, in some circumstances, be a mutually acceptable arrangement.

For fixed term tenancies, the term may typically be 1 year, 2 years, or 3 years with rights of renewal. The rights of renewal will be expressed as the number of times the lease can be renewed. For example, a lease may be a fixed term for 3 years with 3 rights of renewal each for a further period of 3 years. How the rent is fixed will depend on the circumstances of the parties and a commercial leasing agent will negotiate the best outcome for the owner who will wish to have security of a tenant.

## Rent:

When a lease is signed, typically the tenant will pay two months of rent in advance to secure the premises and effectively as a deposit. Rent in the Deed of Lease is expressed as an Annual Rent sum. The Annual Rent will be for the Premises and any car-parks. Unlike residential property management, Bonds are not usually paid in commercial leasing arrangements but may, on occasion, form part of the arrangement between the owner and the tenant.

Rent may be paid weekly, fortnightly or monthly and is always paid in advance.

GST is always added to the Rent (i.e. Rent plus GST).

## Outgoings:

A commercial leasing arrangement differs from residential property management in that a commercial tenant is typically responsible for the outgoings of the building. Outgoings are costs and are called Operating Expenses referred to as OPEX.

Outgoings include costs such as local body rates, insurance, compliance costs and other costs. The tenant will also typically pay for power, phone, water etc. The outgoings are detailed in the lease and clarity is provided as to who is paying for what costs (i.e. whether the tenant pays for the costs or the owner). If the tenant only occupies a portion of the building then they may only pay a proportion of the outgoings. Outgoings are important to commercial property managers as these, along side the payment of rent, are monitored by the commercial property manager that they are being paid by the tenant. In this regard, outgoings may include council rates, water rates, body corporate levies. These will all be detailed in the lease.

## Breaking a lease:

When fixing a term in a lease, both parties are committed to the lease and cannot depart from it unless they mutually agree or consent to do so. If the parties mutually agree to break a lease, then a Deed of Surrender of Lease document would be drafted and assistance from a solicitor would be sought.

## Sale of a building:

The lease will be sold with the building. The tenant maintains their rights to continue their commercial tenancy.

##

## Assignment of Lease:

If the parties (landlord and tenant) agree for the tenant to assign the lease to someone else then a Deed of Assignment of Lease will be entered into. A solicitor will assist the parties to ensure the right paperwork is signed.

## Sub-letting:

Sub-letting or parting with possession of the premises or car-parks or any other aspect of the premises is not permitted without the express written consent of landlord.

# Commercial Property Management – The Right Tools:

A software system is **essential** to manage the commercial tenancy and ensure that the landlord is provided with surety that the commercial property manager is doing their role diligently. This software system will form the platform for effective commercial property management. It will help a commercial property manager to not miss important aspects of commercial property management as it will provide a good diary system, together with pop ups and reminders for important dates such as commercial lease renewal dates and rent reviews. Further it will help manage the communication with the commercial building owner, providing financial statements detailing income and outgoings, invoices and other communication as well as managing the relationship with the tenant by providing communication regarding service providers attending the building and if access is required, if rent payments are missed and any other communication required from time to time. Good quality systems also have an SMS and email capability to record all communication and be auditable given that client money is being handled by the commercial property manager.

There are numerous commercial property management software systems available varying in complexity. Leasing management software should include including raising OPEX invoices, storing lease documentation, storing our management authority as well as all important and key lease details – name of tenant, address of property, area leased, important dates for lease renewal, rent reviews and expiry dates. It is important to familiarise ourselves with the programme we use and there are tutorials and help from our colleagues that will assist to navigate how to set up a new property and ensure that it is managed properly from the start. These are explained in more detail below.

## The basics for good commercial property management include:

Ensuring that the name of the tenant and the commercial building owner are entered. As detailed earlier, this may be an individual, a trust or a company. It is important to ensure that the details are entered correctly.

## Address of premises:

Ensure that the right address and legal description is entered, including the floor occupied by the tenant.

## Addresses for service for landlord and for the tenant:

This may differ for the tenant from their premises. Ensure that the correct address is entered for communication because if the tenant falls behind in their rent, you will want to ensure that you have sent the letter to the right place.

## Guarantor:

If there is a guarantor for the lease, the guarantor’s name will be listed in the lease. The role of the guarantor is to guarantee the lease arrangements and therefore an important person to know the details of in case of any default under the lease provisions.

## GST information for the landlord and for the tenant:

GST is important for tax purposes. It is claimable if the tenant or the landlord is registered. GST is most typically paid on top of the rent as specified in the lease.

## The Annual Rent:

Ensure that this checked and double-checked from the lease as it is entered. Entering this incorrectly will cause a huge problem.

##

## Term of Lease:

Again, this is critically important for renewals and the end date for entering into negotiations with the current tenant or finding a new one. Your role as a commercial property manager is to keep an eye on all these dates so that the landlord can take steps to mitigate any vacancies.

## Rights of Renewal - how many rights and for what period:

Again, critically important to understand how many rights of renewal exist in the lease and if it is a commercial building that you have managed to secure part way through a lease, how many rights of renewal remain.

How the rent is paid (weekly, two weekly, monthly)? This will be important for accounting purposes and setting the software to ensure timely payments are made to the landlord.

## Details of Rent Reviews:

Rent reviews are important in commercial leasing. Leases typically contain provisions that allow for rent reviews and the timing of those reviews, e.g. yearly, every 2 years or 3 years. It is very important for a commercial property manager to be vigilant of the rent review provisions and ensure that information that has been entered into the commercial property management system is correct. If a commercial property manager missed the rent review date and did not provide a reminder to the owner, then the owner could make a claim for compensation. Rent reviews may be a fixed sum increase that is based on a survey of the market and any increases that have taken place or it may be a percentage increase linked with CPI. A valuer may become involved to determine any increases.

A clause called a “ratchet” clause indicates that if rents have fallen below the current rent, any new rent cannot be less than that being already paid.

Assistance from a commercial leasing manager or the owner and a valuer is generally sought to negotiate a new rent with the tenant.

## Improvements and increases in rent:

Sometimes the owner may have improved the building throughout the tenancy. These alterations may have been required under the Building Act 2004 or may be other alterations to improve the overall building. The lease may allow for the owner to charge the tenant a proportion of these improvements. For example, the owner may charge 10% of $100,000 spent on the building as the tenant will have gained some benefit from this. However, careful reading of the lease and understanding of what renovations or alterations have taken place is essential before looking to make any increases. In multiple tenancies, any increases would be spread amongst the tenancies depending on where the improvements/alterations have taken place.

## Details of the default of rent penalties (e.g. the percentage above any bank rate if a tenant defaults on their rent):

The landlord may wish to charge interest on late rent received. This is a discussion that you should have with the landlord as they may or may not wish to enforce this clause – it will depend on the circumstances even though, typically, it is an inherent right of the landlord to do so under the terms of the lease.

## Use of premises:

This is important as any change of use would need to be agreed and may impact on fire safety or other aspects of the building regulations.

## Details of outgoings and who is responsible for these:

As mentioned earlier in this manual, a list of outgoings must be recorded as these form the basis of collection of rent and outgoings by the commercial property manager.

##

## List of any chattels, fixtures and fittings:

It is important to have a comprehensive list of all chattels, fixtures and fittings. The tenant is typically responsible for their own redecorating and refurbishing but again, this will depend on the terms of the lease. Sometimes fixtures and fittings are part of the negotiation between the owner and the tenant when initially starting the lease but usually tenants are responsible for their own premises. In the lease document, there should be provision for when the tenant vacates the premises that they will make good those premises. This means that if the tenant has modified the premises with fixtures and fittings, the owner may ask the tenant to reinstate the premises as they had originally found them.

## Alterations/Additions:

Read the terms of the lease carefully. A tenant is typically responsible for their own alterations but must seek permission to do so. Some alterations may trigger fire safety changes. The tenant should be responsible for paying any additional fees associated with increased compliance.

## Photographs of the premises – internal photographs and external photographs:

Ensure that good photographs are taken when you take over as a commercial property manager and any photographs that have been supplied by the landlord are also catalogued. Photographs are critical evidence especially when a tenant vacates and ensuring that the provisions of the lease regarding any reinstatement of the premises is followed (with fair wear and tear excepted).

Photographs should also be taken with interim property inspections as per the Service Agreement between the commercial property manager and the landlord. In this regard, photographs will back up any reporting made to the owner. They are also excellent to illustrate any areas that may require maintenance and particularly for absentee owners.

## Insurance details and the type of policy:

To mitigate risk, it is important that the owner renews their own insurance policy themselves and that this is not a task undertaken by the commercial property manager. Make sure that this is made very clear to the commercial building owner – that they are responsible for their insurance policy but must provide a copy of it to the commercial property manager at each renewal.

There are two types of policies for commercial buildings.

* Full replacement and reinstatement policy or
* Indemnity to full insurable value.

It is important to note in the commercial property management software the following:

* The type of policy.
* The policy number.
* Who the insurance is with and details of the excess.
* A copy of the policy itself in the event of a claim as the commercial property manager may need to assist the owner to make a claim under the policy. Understanding any exclusions, the excess amount and who to contact are important.

## Details of the valuation for the building:

There are two types of valuation:

### A valuation for insurance purposes:

A valuation may be obtained by the commercial building owner to ensure that they have insured their building to full replacement value if that is the type of policy that they wish to have (and recommended to have). It is prudent for a commercial building owner to do this annually but some may decide to obtain a valuation every two years. Their insurance for full replacement if a total loss occurred is based on that valuation and if the commercial building owner elects to obtain a valuation less frequently than yearly, then there may be movement in the building/construction market and the building could be underinsured in the event of a total loss.

### A market valuation:

Some owners will obtain market valuations and may provide these to their commercial property manager. Or they may not. A market valuation is not really important for the commercial property manager but if provided, should be stored in the commercial property management software system for good record keeping.

## List of all service providers for the building:

It is very important to know who is doing what service at each of your buildings. There may be many different service providers for IQP, lift servicing, fire safety, cleaning, gardening, rubbish collection, heating/ventilation/exhaust servicing etc. Good commercial property managers as they build their portfolios, may wish to develop economies of scale with service providers and negotiate with them on behalf of all their owners. Monitoring when the contracts expire and are available for re-negotiation is important. Therefore logging the date of each contract is important for those discussions to begin. Managing the new health and safety requirements then also becomes easier with one service provider for many buildings doing the same role.

# Maintenance schedules and recording of property inspections:

Property inspections are critical for commercial property management. Depending on what has been agreed, a commercial property manager should check the building in accordance with the service agreement – once a week is typical. This is not only important to check that service providers (cleaners, gardeners, rubbish collectors, IQP, fire safety etc are doing their roles in accordance with their agreement with the owner), but that the building is also being checked for any hazards.

The building checklist provided with this manual should be used by the commercial property manager and changed to work for the particular building under the commercial property manager’s care. Good records are essential and these should be stored in Re-Leased with reporting to the owner being done at least on a monthly basis alongside the payment of rent from the tenant/s in the building. Once the inspection is completed, good practice is to telephone the owner and explain the report that will be coming to them. Remember, that commercial owners don’t just want to hear things about repairs and maintenance; they do wish to know that the tenant is keeping the premises tidy (as long as this is the case!).

The checklist provided with these guidelines is a starting point that the commercial property manager should develop into their own checklist for each particular building. The basic checklist includes the following:

## Entrance ways:

The entrance to the building creates the first impression. Check the condition of the exterior of the entrance and the interior of the entrance way carefully. Check doors – some buildings have glass doors and at times they may connect. If they connect too closely, they may shatter.

* Check that doors are opening and closing smoothly.
* Check for any cracked tiles, issues with the walls and ceilings.
* Check that the Warrant of Fitness is displayed in the foyer of the building and that it is up to date. Note the date on each of your visits to ensure that the IQP has the renewal in hand and that it is current (a Council can issue huge fines for not displaying a current certificate).

## Foyer:

Check floors, walls, ceiling.

Check lighting.

Check for any wear and tear or any safety issues.

Check cleaning standards.

## Lifts:

Check doors (inside and outside). Check inside of the lift (if there is one) – walls, ceiling and floor.

## Signage:

Check to ensure that all signage on the building is compliant with the terms of the lease. Some tenants will have signage rights and others will need to request for signage to be placed. Check internal signage of the building – that no lettering is missing and that there is clarity of who occupies what floor for visitors and contractors.

Check illuminated emergency signage is working.

## Fire Safety:

Visually check that fire extinguishers are in date of their service. Check fire alarms have not had their glass covers broken.

The building and each floor should have very clear signage of fire evacuation procedures and the occupants must be familiar with these. Work with your fire service contractor to ensure that compliance is met.

Fire evacuations should be scheduled routinely for occupants to practice what they should do in the event of a fire. Fire wardens need to be appointed with clear instructions of what they need to do and where people need to gather.

At times, the NZ Fire Service as a result of tenants or their occupants activating fire or smoke alarms will receive callouts. These should all be treated with seriousness. If it turns out that it was a false alarm, the role of the commercial property manager is to work out how it was caused. If it is attributable to a tenant, then any fee issued to the owner by the NZ Fire Service for the call out should be passed onto as a debt to the tenant. An example of a false alarm call out may be that a tenant was cooking something in the kitchen and it activated a smoke detector.

## Floor coverings:

Check any common areas and that these are in good order and not creating any hazards.

## Maintenance inspections:

Discuss any maintenance issues with the tenants and occupiers. Determine what the landlord is obligated to remedy and what the tenant needs to remedy under the term of their lease. Check that the tenant is observing the lease and their obligations.

## Lighting:

Check that all lighting is working – do this visually only. Call an electrician where any lights are flickering or are out of order.

## Stairwells:

Stairwells are typically used for emergency exit. Make sure that these are free from hazards and that there are clear passage-ways to exit the building. At times tenants may try and store things in the stairwell. This is a breach of tenancy as it creates a safety issue to ensure safe egress out of the building. Ensure that the floor coverings are clean and tidy and free from any trip hazards. Ensure that the handholds are secured to the wall firmly. Check that the area is also clean. Often stairwells get neglected and become dirty.

##

## Common area toilets:

Ensure that these are clean and tidy and have all the amenities – paper, soap, toilet paper, sanitary facilities. Ensure the cleaners are doing their roles properly under their service agreement.

## Car-parks:

Check that these are free of debris, clean and tidy. Check condition of the asphalt or concrete. Record any potholes or safety concerns. Ensure good signage including tow-a-way or clamping signage is in place for any breaches of car-parking arrangements. Ensure lines and parks are marked clearly.

## Rubbish collection:

If the building has a rubbish collection area that is used by the tenants – ensure skips and wheelie bins have been properly stored and are not creating a hazard for the occupants or visitors to the building.

## External areas of the building:

Visually check the outside of the building and highlight any aspects to the owner that may require any investigation or the assistance of a contractor.

## Hazards:

Take special note of any hazards identified at the building to notify the owner.

# Health and Safety:

The new health and safety Act “Health and Safety at Work Act 2015” came into force on 4 April 2016 together with many accompanying regulations. The regulations were released in February 2016 and The fundamental and underlying aspect of the legislation is that safety and protection of people is paramount.

In this regard, commercial property management just like residential property management has a duty under the Health and Safety at Work Act 2015. WorkSafe New Zealand (see <http://www.business.govt.nz/worksafe/>) has advised that a commercial property owner/landlord is a “person conducting a business or undertaking” (PCBU). This means that commercial property owners/landlords have a duty of care, so far as is reasonably practicable, to ensure the health and safety of everyone involved with or affected by work on or at the property. WorkSafe New Zealand has advised that this includes the work that is organised or that the owner/landlord has a responsibility for.

People that may be affected include tenants, contractors that are engaged, and members of the public that are visiting the property.

Under the new Health and Safety at Work Act 2015, a property manager is also a PCBU and will have a duty of care, as far as reasonably practicable, to ensure the health and safety of everybody with or affected by work on the property that they are responsible for. As a commercial property manager, there is also the responsibility for the management and control of the property with the duty that the property that is a work place is without risks to health and safety.

WorkSafe New Zealand also advise that commercial tenants are PCBUs and have the same duty of care as other PCBUs, as far as reasonably practicable to ensure the safety of their workers and others.

If the building is part of a Body Corporate, then the Body Corporate is a PCBU, and again has the same duty of care as other PCBUs, as far as reasonably practicable to ensure the safety of their workers and others.

As a commercial property manager you will need to make sure that the Act and its regulations are complied with. In this regard, you will need to ensure that contractors are pre-qualified and have the necessary skills to undertake the work that they are engaged to perform. Whether this work be large or small the same principles will apply and ensuring safety of the occupants and visitors to the building is paramount. Only registered and pre-qualified contractors should be used and engaged in accordance with the organisation’s health and safety processes and procedures.

When conducting inspections, it is important to act swiftly for any hazards that are identified and to notify the owner of the building and assist them to effect the removal, repair or remedy of the hazard that has been identified.

# Budgets for the building and owner reporting:

A budget can be set each year to monitor income and expenditure for each of your buildings. Reporting each month on any variances and proactively identifying any upcoming income or expenses makes for good commercial property management.

# Key management for tenants and contractors:

It is important to have all keys for a property and ideally a master key if at all possible. It is also important to manage a key register for security reasons. No keys should leave the commercial property manager’s care without a record of the key and who has it. Check your key register regularly. Audit keys periodically.

# Independent Qualified Persons (IQPs) issue a Building Warrant of Fitness (BWOF) for buildings. Maintain these in your records:

These are important for the safety of the building. Ensure that you engage good contractors who can take care of this on your behalf but your role as a commercial property manager is to check that the contractor has done their role. These records are critically important as the local authorities can issue large fines if a building does not have a current warrant of fitness and it compromises the insurance policy e.g. an insurer may refuse to pay out if the building did not have a current warrant of fitness.

# Issuing work orders and invoice payments:

Always ensure that you engage the right contractors to do a job. This has become even more important under the new work place safety legislation.

# Abseiling anchors:

Ensure that if the building has abseiling anchors that these are checked regularly and certified by a specialist service provider. These are critical to the safety of window cleaners and painters. Their life depends on these.

# Requesting quotes for routine maintenance:

It is important to have a good list of contractors that all comply to the new legislative requirements. Keep this list up to date as good tradespeople are important in the management of commercial buildings. Some owners will require several quotes for larger jobs. A good network of tradespeople will help you to manage your role and comply with your client’s requests.

# 10 year maintenance plans:

A 10 year maintenance plan for the building is very helpful to manage maintenance for the owner and know when things are coming up from a budgeting perspective. You may recommend that an owner obtain a 10 year maintenance plan for their building. A 10 year maintenance plan can be professionally prepared and will ensure that the building is maintained to a high standard and attracts the best tenants at the best market rent.

# Access for repairs:

The relevant clause of the Deed of Lease will allow for the commercial property manager to have access to inspect the property. The inspections should be done in consultation with the tenant and good process is to issue a letter that an inspection of the property is due. Inspections should not cause interference with the business practice of the tenant. At times, fire safety and testing contractors will require access to the premises to ensure everything is working properly and to account for the issuing of a building warrant of fitness. This is covered in the Maintenance and Inspection sections.

# Graffiti:

With the owner’s permission, engage a contractor to do a sweep of the buildings in your care on a rotation basis and to remove graffiti quickly. Some local authorities provide this service, however, they can mismatch the paint on the buildings. It is better to manage this process yourself if possible. A Monday is usually a good day for the service contractor to do the sweep following a weekend.

# Owner’s statements recording income and outgoings and owner payments:

Re-Leased makes this easy but only when the information is correct. Care must be taken to reconcile rent and invoices every week to ensure that end of month payments are easy and not fraught with difficulties. Discuss with your Team Leader how the payments will be made to the owner as this area may be taken care of by the accounts department for arms length accounting and good business practices. Weekly or two weekly payments add to the administrative tasks of the commercial property manager or accounting department. It is best if the payments to the owner can be made monthly where possible.

# Letters and important information:

All of [insert company] templates are stored in Re-Leased and can be mail merged to the relevant tenant or owner. We will continue to develop our templates. Some templates have been provided with this manual as a guide – you may have more in your leasing software.

# Plans of premises:

It is very important to have the plans for the building and also the title of the building. This can be particularly important when a plumbing issue occurs – having the detailed drawings for the building will save on time with maintenance. From time to time, there may be a reason to look at the title for the premises as well. Having all the documentation stored in softcopy and at your fingertips is important. It is important that the area being leased is clear in the Deed of Lease – both in size and as a drawing so that there are no misunderstandings.

# Carparks:

Carparking can become an issue in commercial property management. Clear plans of carparking arrangements and an understanding of what carparks are allocated to what tenants will mitigate the opportunity for disputes to arise.

# Earthquakes and other disasters:

All occupants should understand to Drop, Cover and Hold in the event of an earthquake and the safety procedures for safe evacuation of the building including not using any lifts.

All earthquake events should be taken seriously.

In the event of a sizeable earthquake (and this will all depend on its magnitude and depth), a building owner through their commercial property manager should immediately arrange a building structural engineer to check the building to ensure safety of the building and its occupants.

Earthquakes can cause superficial as well as structural damage. No chances should be taken in an event that has caused concern and the appropriate and skilled people such as building engineers should check the building thoroughly for any structural damage. Insurance claims may also be triggered.

Communication by the commercial property manager with the owner and the occupants of the building will be critical during this type of event.

Provisions under the Deed of Lease may also need to be applied in a partial or completely damaged/destroyed situation.

# Details of the earthquake strengthening of the building:

Tenants may wish to know before they take out a lease, what the earthquake resilience is of a building that they will occupy. It is important to have this information to hand by way of a report from the owner that an assessment has been undertaken.

Some buildings will be deemed earthquake prone by the relevant authority. A notice from the relevant authority must be displayed clearly in accordance with the authority’s requirements. Sometimes Councils will issue letters about a building if it falls below a standard and may be received by the owner or by their commercial property manager. It is important to assist in responding to any letter issued by the relevant authority.

The letter may request that a structural engineer be consulted to obtain advice on the details outlined in the letter and whether the owner agrees with that advice or not. Calling an expert to assist is critical as at times Councils do assess buildings on a desktop basis and the difference between a 33% assessment and a 34% assessment can make all the difference including a financial one.

As a commercial property manager, it is important to familiarise yourself with the various Council requirements. For Auckland City Council, the following information is available:

## Changes under the Building (Earthquake-prone Buildings) Amendment Act 2016

On 1 July 2017, the Building (Earthquake-prone Buildings) Amendment Act 2016 came into effect.

This supersedes the earthquake-prone buildings section of Auckland Council’s Earthquake-prone, Dangerous and Insanitary Building Policy.

Auckland City Council will write to building owners affected by the legislation change with further information. Letters will have been sent from November 2017 and mid-2019, depending on local board area.

The act applies to commercial buildings and some residential buildings.

Residential buildings are only covered under the act if they:

* comprise two or more storeys and three or more household units,
* or are used as hostels, boarding houses or other types of specialised accommodation.

The act does not apply to:

* farm buildings
* stand-alone retaining walls
* fences
* statues and other monuments that cannot be entered
* wharves
* bridges
* tunnels
* storage tanks.

## Previous earthquake-prone building assessments

If one of our clients has a building that was assessed as not earthquake-prone under Auckland City Council’s initial evaluation programme, then they will not need to take any further action.

If one of our investor clients owns a building that was assessed as earthquake-prone under Auckland Council’s initial evaluation programme, the owner can either:

* retain the assessment rating from that process
* engage a chartered professional engineer to undertake a new assessment using [the methodology set out by the Ministry of Business, Innovation & Employment (MBIE)](https://www.building.govt.nz/building-code-compliance/b-stability/b1-structure/methodology-identify-earthquake-prone-buildings/).

## New earthquake-prone building assessments

If the owner chooses to undertake a new assessment using the [MBIE methodology](https://www.building.govt.nz/building-code-compliance/b-stability/b1-structure/methodology-identify-earthquake-prone-buildings/), the result of the assessment will supersede any existing seismic assessment rating.

The owner has 12 months from the date you receive written notification from Auckland City Council to carry out a new assessment and this is done at the owner’s cost.

**Extension to provide an earthquake-prone building assessment**

An extension of up to 12 months may be available if the owner is unable to provide an assessment by the due date.

The owner will need to apply for an extension at least two months before the initial due date.

## Buildings with earthquake-prone status

If the building retains an existing earthquake-prone evaluation or is rated as earthquake-prone under the new assessment, the owner will:

* be issued with a statutory Earthquake-Prone Building (EPB) notice, which as the commercial property manager we must display in a prominent place in the building.
* have the details of your building added to a new [national register of earthquake-prone buildings](https://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/epb-register/)
* have 35 years from the date of the EPB notice to strengthen the building so that it is no longer earthquake-prone, or carry out a [substantial alteration](https://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/what-earthquake-prone-buildings-system-means-for-you/owners-of-earthquake-prone-buildings/#jumpto-substantial-alterations-to-an-earthquake__002dprone-building) or change of use, have to strengthen the building at the same time.

### Earthquake-prone buildings with multiple unit titles

When a building with multiple unit titles is deemed earthquake-prone, the owner of each title will be issued with a separate earthquake-prone building notice.

### Extension to complete strengthening for heritage buildings

The owner can apply for a 10-year extension to complete the strengthening works earthquake-prone building that is:

* a Category 1 listed building, or
* on the National Historic Landmarks list.

 For further information, email our seismic performance team at eqbproject@aucklandcouncil.govt.nz.

### Exemption from strengthening for isolated buildings

The owner can apply for an exemption from strengthening works for an earthquake-prone building that is:

* used infrequently
* poses a low risk of injury to people and damage to other property in the event of an earthquake.

For detailed qualifying criteria, see [section 10 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005](http://www.legislation.govt.nz/regulation/public/2005/0032/latest/whole.html#DLM7325117).

For further information, email our seismic performance team at eqbproject@aucklandcouncil.govt.nz.

Until such time as those repairs are undertaken and completed, the owner will be required (and as a commercial property manager, your role is to ensure that it is) to display any notice that Council requires in a visible location. This is to ensure that people who occupy or visit the building that the building has been assessed to be earthquake prone and that damage may be incurred to either the building and its occupiers in the event of an earthquake. At times some owners will want these signs to be placed in not so visible places. This is not acceptable and it is important that the signs are displayed in accordance to Council’s requirements and that during inspections, your role as a commercial property manager is to check that the sign is visible.

# Bodies Corporate:

Sometimes a commercial building may form part of a body corporate. As a commercial property manager, you should obtain the relevant operational rules and ensure that the tenants of the building understand their obligations. It is also important to obtain the annual general meeting minutes from the owner and any extra ordinary meeting minutes as they have occurred.

The tenants may be responsible for paying the body corporate levies under the term of the lease.

# Templates:

## Right of renewal:

Typically, a letter for a right of renewal will look like this:

Date:

Name of Tenant

Address for Service:

Dear [Tenant]

**Re: Right of Renewal and Rent Review:**

We are writing to advise that in accordance with the Deed of Lease between you [insert name of tenant] and the landlord [insert name of the landlord] dated [insert date] for the premises located at [insert address of commercial premises] and pursuant to the First Schedule of Deed of Lease, the lease is due for renewal on [insert date].

Please be kind enough to advise whether you wish to renew the lease. Please also note that in accordance with Clause [insert clause from lease], a rent review has been carried out. The current rent of [insert amount plus GST] will change to [insert amount plus GST] on the renewal date of [insert date]. Please advise whether you wish to renew the lease and whether you agree to the new rent. We look forward to hearing from you.

Yours sincerely

**[insert name and title]**

For and on behalf of [insert name of owner].

Final Expiry Date:

Deed of Lease - [insert address]

Thank you for notifying us that you will not be renewing your lease in respect of the Deed of Lease between you and [insert landlord name] dated [.  ].  On behalf of the landlord,  we wish to thank you for your tenancy.  The last day of occupation will be [insert date].

Closer to the vacation date, can we please arrange a suitable time to meet you at the premises to ensure that they are left as per our Deed of Lease agreement; in particular in respect of any additions, alterations, reinstatements and chattels?

In the meantime, on behalf of the landlord, we will be making arrangements for re-leasing the premises and appreciate your cooperation with this process.  We will work with you regarding access at reasonable times and limiting any disruption to you and your business operations.

Yours sincerely

**[insert name and title]**

For and on behalf of [insert name of owner].

## Overdue rent:

This is an important role of a commercial property manager. Rent monitoring is critical as commercial leasing arrangements typically have much higher rents than residential property and therefore the impact of a week or two of missed rent is much bigger. Also, the debt can grow extremely quickly.

Overdue rent must be acted on immediately. Typically, a phone call first, followed up by a letter. Records must be kept as things may escalate to requiring legal assistance for debt recovery proceedings and terminating the lease arrangements. A letter for overdue rent may look something like this:

Date:

Name of Tenant

Address for Service:

Dear [Tenant]

**Breach of Deed of Lease – Rent Arrears**

A Deed of Lease dated [insert date] between you as lessee [insert name of the tenant] and the lessor [insert name of the landlord] for the premises [insert address of the premises].

In accordance with Clause [ ] of the Deed of Lease, you are in breach of your lease obligations by failing to:

1. Pay the correct rent for the premises. The arrears total [insert $ total arrears] as at [insert date].
2. Pay the correct amount [or proportion of outgoings – use correct term]. The arrears total [insert $ total amount] as at [insert date].

You must immediately remedy the breach of lease by paying the rent [and outgoings] owed. You are required to remedy this breach within 10 working days of the date of this letter.

Take notice that should you fail to remedy this breach within 10 working days from the date of this letter, then the lessor shall exercise their legal rights and remedies which may include but not be limited to cancellation of the lease and legal proceedings for debt recovery.

In accordance with section 253 of the Property Law Act 2007, you may apply to a Court for relief against cancellation of the Lease and should seek legal advice accordingly.

Yours sincerely

**[insert name and title]**

For and on behalf of [insert name of owner].

# Breach of lease – rent arrears:

If the tenant does not pay their rent after receiving this letter, then there is relief and remedy that can be sought by the landlord including as the note says cancelling the lease and debt recovery proceedings for rent and outgoings that are outstanding. You will need to engage the assistance of a solicitor to assist you with cancellation of lease proceedings and debt recovery depending on how the owner wishes to handle the situation. There are specific requirements under the Property Law Act 2007 and in the event of the tenant being a company there is provision for or a Statutory Demand under the Companies Act 1993. How these letters and demands are to be issued and served is important as there are specific legislative requirements. Therefore ensure that with the permission of your owner, you seek assistance from an expert e.g. a solicitor at the owner’s cost (recoverable from the tenant in breach).

Generally, for the purposes of your understanding the following is indicative of the process. If the tenant **who is still in occupation** fails to pay their rent following a notice being served as with the template example in this manual, then the following processes may apply.

Serving of this notice should be sent by registered post. The notice is deemed to have been served following two days after it was sent. S249 of the Property Law Act 2007 requires the notice to also e sent to the tenant’s bank or in the event that the tenant is in liquidation (to their receiver). A search of the companies website will help you determine whether the company is in receivership or liquidation and the details of the receiver.

If the premises are also sub-leased, notice should be provided to the sub-leasee.

Notice should also be provided to the sub-lessee’s bank or receiver (if the sub-leasee is in liquidation). See s249 of the Property Law Act 2007.

If after 10 working days (plus 2 days for registered post delivery) no rents have been received, then the investor can cancel the Lease by re-entering the premises provided that this is done peacefully. If it cannot be undertaken peacefully, then a Court order will need to be applied for. A solicitor’s letter to re-enter the premises is helpful in the circumstances.

It is important to note that a landlord cannot seize under the Property Law Act 2007 the tenant’s goods for rent owing.

Where a **tenant has vacated**, the notice issued by the commercial property manager should also be sent in accordance with s245 of the Property Law Act 2007 being:

The tenant’s bank or receiver. Again, complete a search of whether the tenant is in liquidation and who is the appointed receiver.

If the premises are subleased, to the sublease.

And to the sub-lessee’s bank or receiver (if the sub-lessee is in liquidation).

Again, if the tenant is no longer present in the building, the same principles apply that the Lease can be cancelled.

# Access for Re-letting the Premises or in the event of Sale:

Clauses under the Deed of Lease cover the situation for accessing the property regarding re-letting by a commercial leasing manager. Typically the wording will include being mindful of the viewing times so that the current tenant is not inconvenienced or their business disturbed. Good communication and diplomacy is required. The communication will be via the commercial property manager to the tenant and conduct/diplomacy will be by the commercial leasing agent looking for new tenants on behalf of the owner. Where an owner has engaged a commercial leasing agent outside of your real estate firm – keep in good contact with that agent to ensure that the provisions under the lease regarding inspections is adhered to.

Anyone acting on behalf of the owner needs to have authority to do so. In this regard, a leasing agent will have an authority to find a new tenant or if the owner is trying to find a tenant privately, they must do this themselves. Be careful not to be drawn into being a leasing agent on behalf of the owner for multiple reasons – e.g. it may not be your skill set if you are not qualified, it departs from your agreement with the owner and you could be in breach of REAA requirements governing commercial leasing agents. Rely on the experts who are leasing agents to assist you and to find a new tenant for the owner.

Date:

Name of Tenant

Address for Service

Access for Re-Leasing

We are writing to advise that [insert name], commercial leasing agent, will shortly begin the process of re-advertising the property for lease. We appreciate that it is important to ensure your business continuity and quiet enjoyment and will liaise with you to arrange viewing times for any prospective new lessees. The agent’s details are as follows:

[insert details]

Please do not hesitate to contact me if you have any issues or concerns.

We appreciate your cooperation.

Yours sincerely

**[insert name and title]**

For and on behalf of [insert name of owner].

Date:

Name of Tenant

Address for Service

Access for Re-Leasing

We are writing to advise on behalf of the owner, that the property is being listed for sale. The sales agent who will be handling the sale is [insert name]. They will shortly begin the process of advertising the property for sale. We appreciate that it is important to ensure your business continuity and quiet enjoyment. All obligations of the Deed of Lease remain the same.

The sales agent will be in touch with you to arrange viewing times for any prospective purchasers. The agent’s details are as follows:

[insert details]

Please do not hesitate to contact me if you have any issues or concerns.

We appreciate your cooperation.

Yours sincerely

**[insert name and title]**

For and on behalf of [insert name of owner].

# Repairs and maintenance - access:

Clarity is provided in the Deed of Lease as to who is responsible for what. If a tenant is not maintaining the property (outside of fair wear and tear), then a letter to the tenant should be issued stating the Clause that they are in breach of in their lease and requesting remedy/repair.

Date:

Name of Tenant

Address for Service:

Dear [Tenant]

**Access for Repairs:**

We are writing to advise that [xyz contractors and name of key contact person] have been arranged to carry out [explain repairs] at the premises. Thank you for agreeing that the date and time that has been suggested and now arranged being [insert date and time] is suitable to you. We expect the repairs to be completed by [date]. If this changes, we will let you know.

Please do not hesitate to contact me should you have any questions.

Yours sincerely

**[insert name and title]**

For and on behalf of [insert name of owner].

# Vacating tenant:

The lease provisions will provide that the premises must be left in the condition that they were found at the start of the tenancy subject to fair wear and tear.

# Removal of fixtures and fittings:

The lease document will specify that the tenant needs to remove their fixtures and fittings. Where a tenant causes damage to the property during that process, they will need to repair and remedy that damage. There are provisions under the lease arrangement that allows the landlord after a period of time where the tenant has not removed their fixtures and fittings for the landlord to dispose of them.

Costs associated with repairing any areas of the building as a result of the tenant not complying with the deed of lease in respect of removing fixtures and fittings can be on charged to the tenant.

It is important as a commercial property manager to liaise with the owner as to how they wish to handle the fixtures and fittings and any chattels left behind by the tenant. Tenants may have improved the floor with the building of offices etc, therefore an owner may wish to retains those improvements for the next tenant.

# Dealing with people:

Diplomacy is always the key in commercial property management. Relationships are important and your investor client has engaged you to be a good steward of their building and for the investor to have an arms length relationship with the tenant. Talking things through with the tenant is first and foremost. While a commercial property manager’s role is to protect the interests of the investor, they must do so fairly and consistently. There is nothing worse than a bad or fractious relationship. This should be avoided if at all possible.

The key to a good relationship is listening. Often things can be resolved fairly, simply and easily without escalation. At times, it may not. Use common sense.

# Education:

It is important as a commercial property manager to continue to up-skill. This guide only provides the basics of commercial property management.

A good commercial property manager will familiarise themselves with the Building Act 2004, the Property Law Act 2007, Health and Safety in the Workplace Act 2015 and its Regulations, local council and authority by-laws and regulations, attend conferences for commercial property management and consider a membership with the Property Institute who provide webinars and collegiality opportunities.

# Final note on being good commercial property manager:

A good commercial property manager will read widely and familiarise themselves with commercial buildings. Outside of reading widely and understanding the commercial property management software and its capabilities, the commercial property manager will be organised, have excellent time management and maintain a good register of service providers who can be relied on. A good commercial property manager keeps their investor client informed at all times and maintains good relationships with the tenants and occupants of a commercial building.

A commercial property manager is the conductor of a well-tuned orchestra ensuring that everyone is doing their role, that the lease arrangements are being observed and that there is good communication with the owner about their asset and with the tenant providing a livelihood to the owner.