

Leasing essentials

Saturday, 24 July 2021

Agenda.

1. Know your structure
2. Leasing Essentials
3. Lease Renewals
4. Rent Reviews
5. Abandoned Property

Know Your Structure.

1. Know how your marina & club is structured
 - seabed tenure (leasehold, freehold or permit)
 - associated dry land tenure
 - business structure
 - Club constitution
 - marina use categories
 - requirements of relevant government and public authorities
 - seabed, commercial and/or retail tenancies?

2. What berthing agreement is appropriate?
 - lease
 - licence
 - casual Occupancy Agreement

3. War Story – annual levies.....

Leasing Essentials.

1. General Terms and Conditions

- Dispute resolution
- Rights of Re-entry
- Maintenance Obligations
- Outgoings
- Rent Reviews - will the rent be reviewed in the term and how (by fixed rate, cost of living indexed or expert determination)
- Additional security – bond, guarantee, POA, Liens, Charges
- Insurances / Indemnities / Releases
- Make good provisions
- Compliance with laws and / or other agreements
- Health, Safety and environmental provisions
- Events of default

1. Reference Schedule

- details of the Lessor / licensor / grantor (i.e. the marina)
- details of the occupant / lessee / licensee
- details of the berth (plan reference, berth number, berth size)
- term (length of use)
- commencement date and expiry dates
- 'permitted use'
- amount of rent payable (when due, how and to whom)
- amount of bond / bank guarantee and/or details of personal guarantors
- amount of insurance required (public risk insurance and property)

1. Other Documents:

- head leases
- marina rules
- laws

Lease Renewals.

1. Strict compliance with lease terms essential esp:

- notice periods
- statutory notice requirements
- form of notice
- form of new lease
- make sure you “paper work” is in order
- new rent

2. War story.....bad records

Rent Reviews.

1. Main types

- Index – CPI
- Fixed increase (e.g. 3% annually)
- Market Review
- Ratchet

2. Market Review

- Detailed process
- Basis for determining market rent
- Dispute process

3. War Stories..... Bad review clause vs. good review clause

Abandoned Property.

- Each State has abandoned goods laws that allow certain businesses that store or repair a customer's property to either hold or sell that property (like a boat) where it is either abandoned or in order to satisfy a debt
- There is a strict processes that need to be followed:
 - Notices at point of sale / premises
 - Customer is made aware of debt
 - Advertising in local paper that boat is to be sold
 - Usually must be sold by auction
 - Court order might be required for goods over a certain value
 - Usually interest on debt and recovery costs can be taken from sale proceeds
 - Residual sale proceeds may need to be paid to the boat owner, another creditor or another body (such as a bankruptcy trustee)
- Often involves or overlaps with Personal Property Securities Laws that now exist in many jurisdictions
- It is often better to have contractual rights in place e.g. abandoned goods clauses in leases / licences

Questions?

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