


 mikehippsfinance

Leasehold Motels and Caravan Parks

Deeds of Consent and Right of Entry Explained



If, like almost all buyers, you need to borrow money to purchase a motel or caravan park lease you will at some point encounter the dreaded Deed of Consent and Right of Entry (ROE). I say dreaded because if these seemingly innocent documents are not managed properly the transaction could well crash and burn! Here's how it works. The bank lends against the value of the lease and takes a charge over said document. The landlord needs to consent to the charge and usually that's the easy part. The bank lending the money for lease needs to be able to take over the motel operation if you go broke. Not a likely scenario but it does happen occasionally. The bank secures its position by entering into a Right of Entry agreement with the landlord that sets out the rights and responsibilities of the parties in the event of a leasehold borrower default. The landlord (and their lawyer) and the bank will both have their own views on who should have the most power in this scenario so there is typically a bit of negotiation in respect of the content of the document. Now here's where things get complicated. Most landlords have borrowed money for their freehold investment motel so they have a mortgagee. That lender will also want a say in what goes into the Deed of Consent and Right of Entry document. So now we have the incoming leasee, the leasee's lawyer, the leasee's bank, the landlord, the landlord's lawyer and the landlord's bank all trying to agree on the content of a document in which very party would prefer to have the upper hand. It's like trying to herd cats. Inevitably the parties come to an agreement but the timeframes can drive you crazy as the document goes back and forth between the lawyers and the banks.

The problems can be compounded by the fact that the Deed and ROE are typically drawn up by the bank once finance is approved. By that stage weeks may have passed since contracts were signed and now we have the possibility of losing further weeks while the document does the rounds. Our process is to have pro forma copies of the banks documents and, once a lender is chosen, to provide your lawyer with a draft of the expected Deed. By being proactive we can get the Deed circulated early, invite any requests for amendments from the landlord and the landlord's bank and hopefully have an agreement hammered pretty early in the process. By taking this strategy we inevitably save our clients a lot of time and angst during what can be a pretty stressful period.

Of course, not needing the Deed at all would be a much better solution. Here's some good news. One of the major banks we deal with is increasingly taking the view that the Deed is more trouble than it's worth and the chances of it being needed are generally so remote as to not warrant the hassle of trying to get the parties to agree. This is great news for clients and a sign of the continuing confidence the banks we deal with have in the leasehold accommodation sector.

Mike Phipps
Director | Mike Phipps Finance.

Mike Phipps. **0448 813 090**
mike@mikehippsfinance.com.au

Paul Grant. **0448 417 754**
paul@mikehippsfinance.com.au

Cameron Wicking. **0477 776 859**
cameron@mikehippsfinance.com.au

Head Office
4/31 Mary Street
NOOSAVILLE QLD 4566

Office. 07 5470 2194
Fax. 07 5455 6626

www.mikehippsfinance.com.au

MIKE PHIPPS FINANCE ACL (364 314)



PREFERRED
SUPPLIER

Real Qualifications
No Surprises!

Australian Credit Licence 364314

