



Amity LAW

**Guide for Buyers
and Operators of**

Motels and Tourist Parks



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Introduction

Clients tell us owning and/or operating a motel or tourist park is a rewarding and (sometimes) challenging experience.

Getting it right from the outset—by identifying and buying the right motel or tourist park for your circumstances—is critical to getting the right return on your investment.

We have acted for a lot of successful owners and/or operators who bought the wrong motel or tourist park business the first time around, learned lessons and got it right the second time.

Contents

This guide is intended to assist people buying motels and tourist parks (particularly those new to the industry) to ask the right questions and seek the right advice so they get it right from the outset. It includes:

- a blurb about us and the services we provide to our clients;
- an explanation of what you actually buy when you acquire a motel or tourist park;
- the steps we recommend a buyer takes before signing a contract to buy a motel or tourist park;
- the steps we recommend a buyer should take after signing a contract;
- a summary of a typical motel lease and some tips about what to look out for when reading the lease (relevant only to leasehold motel businesses); and
- links to some useful industry websites and information.

Your queries

There is a lot more to know about motels and tourist parks than what we have briefly covered in this guide.

Please feel free to contact us by phone or email at any time. Our lawyers will always be available to respond to your queries on any aspect of the purchase, sale or operation of a motel or tourist park.

Contact details for our directors are on the next page and contact details for all our lawyers are on our website – www.amitylaw.com.au.

If you are considering buying a motel or tourist park business or you are an existing owner or operator reading this guide, we hope it assists and look forward to talking with you.

About Us

Accommodation and hospitality specialists

Our sole focus is the accommodation, tourism and hospitality industries. We specialise in acting for owners and operators of:

- Motels and tourist parks;
- Land lease communities (known as manufactured home parks in QLD);
- Hospitality businesses (hotels, pubs and restaurants); and
- Management rights businesses.

Our lawyers have more than 30 years' experience helping clients buy, sell, finance, let, negotiate, dispute and protect their motel and tourist park interests.

We know the industry, know the players and we use this knowledge to get you results.

Clients

Our clients in the motel and tourist park industry are owners, operators and developers, both individuals and corporations of all sizes (listed and unlisted). We have learnt through our clients experiences and our own.

Key contacts at Amity Law

We operate a single point of contact service delivery model. Your primary points of contact at Amity Law would be Matt Allen and/or Adam Geldard.

Matt and Adam are both directors. Either Matt or Adam would be responsible for all your work and the day to day management of the people at Amity Law who would assist you.



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Why Amity Law

Amity Law is not your typical law firm. We offer real benefits, including:

- **Distinctive competence** in our chosen areas of specialisation. A lot of firms claim to be specialists. We are.
- A **contemporary attitude** to our business (we give timely commercial and practical legal advice).
- A **commitment to developing enduring relationships**. We want to become your trusted advisor. We will work hard to understand your business and legal requirements.
- A **single point of contact** service delivery model.
- A focus on delivering value - we do legal work for **fixed fees** agreed upfront with you (there are no fee blow-out surprises with Amity Law).

These things are ingrained into our firm culture and define the way we operate.

Our service guarantee

We guarantee you will receive the highest quality service throughout your matter.

We cannot guarantee outcomes, but we do guarantee your satisfaction with our services.

We charge fixed fees.

If at any time we do not perform to your satisfaction, or if you have any concerns or queries relating to our work or fees, we ask that you let us know.

We will then seek to resolve the matter to your satisfaction, even if this means reducing our fees.

Motels and tourist parks — what you buy

Freehold or leasehold

In most cases, when you buy a motel or tourist park business you buy:

- the goodwill, plant and equipment, intellectual property and other assets used by the seller in the operation of the business; and
- either:
 - o the land and buildings outright—if you are buying a **freehold** motel or tourist park; or
 - o a lease over the land and buildings—if you are buying a **leasehold** motel or tourist park.

This section of the guide discusses briefly the different components that make up a motel or tourist park business.

Land and buildings / lease

Your lawyer will conduct a legal due diligence on the title for the land and statutory searches available for the land and buildings.

If you are buying a leasehold motel or tourist park, your lawyer should also do a thorough report on the lease.

Make sure you physically inspect the land, buildings and assets you are buying. Get a qualified building inspector to inspect the motel or park and give you a building report on any non-compliance or building defect issues.

TIP

Tip: Work with your accountant to forecast capital costs you are likely to need to incur in the near to medium term and budget for those.

Goodwill

Goodwill is an intangible asset.

It is the existing value associated with the motel's / park's brand name, its customer base and good customer relations, its good employee relations etc – or in other words the inherent reasons why the motel / park attracts guests and revenue.

TIP

Tip: to protect the goodwill of the business, your sale contract should have a restraint of trade on the seller for a period of time after settlement in the area in which you are acquiring the motel or tourist park.

Plant, equipment and chattels

The sale contract will have a list of the plant, equipment and chattels being sold with the business.

The list should include every item of plant and equipment, all motor vehicles, spare parts, machinery, furniture, fixtures, fittings, office machines, computer equipment and other assets, fittings or chattels owned by the seller and used in the conduct of the business.

TIP

Tips:

- Look closely at the seller's list and make sure it includes what you need to operate the business. If it doesn't you will need to allow for the cost of buying these things.
- Take the list with you when you inspect on-site and make sure it is accurate.
- Ask for a depreciation schedule if it is not included in the sale contract.

Service and supply contracts

Consider whether you want to take an assignment of some or all of the existing service and supply contracts and/or software licences held by the seller (e.g. cleaning and linen contracts, licence to use booking software programs, supply contract for bathroom incidentals etc).

If you don't wish to do so, make sure your lawyer confirms the contract does not require you to take an assignment of these contracts and you are not responsible for any penalty payable by the seller for early termination of the service and supply contracts.

TIP

Tip: If an assignment of an existing service or supply agreement / software licence requires the consent of the provider / supplier, check the contract makes the seller responsible for getting this consent prior to settlement.

Intellectual property

The intellectual property (**IP**) of a motel or tourist park business is an important part of what you buy.

The IP is the seller's interest in any intellectual property rights specific to the business (e.g. website URL, email address, contact phone numbers, registered business names, registered trademarks, know-how and business modelling and systems).

TIP

Tip: contact relevant service providers and arrange for any necessary transfer forms to be prepared and signed prior to settlement.

Employees

Employees are key to the success of any tourist park or motel business. Good employees are gold.

It is often easier to take on some or all of the existing employees at a tourist park or motel to ensure a smooth transition and the successful continuation of the business.

Try to interview the existing employees. It is often surprising what they reveal about a business.

TIP

Tip: make sure the sale contract does not oblige you to take on existing employees if you don't wish to do so. Check who is responsible for paying out entitlements due to existing employees and discuss this with your lawyer.

Bonds/key money/ prepayments

Make sure you receive - at settlement - the benefit of any bonds or deposits paid in advance by guests.

Often this will be by way of an adjustment to the purchase price payable in the buyer's favour (i.e. the price payable at settlement is reduced by the amount of any bonds or deposits held by the seller, who retains the bonds / deposits).

TIP

Tip: your contract should require the seller to provide you with an updated list of any bonds or deposits held immediately prior to settlement.

Records

At settlement, the seller should give you all original or copy of records, documents, books, files, reports, accounts, plans and correspondence belonging to and used by the seller primarily in the conduct of the business (whether kept in hard or electronic form).

TIP

Tip: work out what you need when you are on-site in the week leading up to settlement and check it is on-site on the day of settlement.

Licences

Often motel and tourist park businesses will require liquor and/or food licences. If the motel or park provides alcohol for guests, the contract should require the seller to transfer the liquor licence held for the motel or tourist park. Refer to our section later in the guide on transferring liquor licences.

TIP

Tip: get your application to transfer licenses submitted as soon as possible after the contract is signed. Note, often both the seller and buyer will need to sign the application to transfer.

Steps before contracting to buy

Preliminary Matters

Industry professionals: To buy a motel or tourist park you will need to deal with a real estate agent, an accountant (to check the books), a finance broker / financier to arrange a loan (if you don't have the equity) and a lawyer (to carry out legal due diligence).

Ideally, you should deal with industry professionals who have significant experience in the motel and tourist park industries (as applicable).

This will make the process more efficient, cost less and mitigate the risk of buying a lemon.

Budget and type: Work out your budget and the type and size of motel or tourist park you want to own before you start looking and communicate this to the agents you are speaking to. Doing this will refine your search for the right asset.

A good finance broker will be able to advise you what your borrowing capacity will be.

Remember to factor in stamp duty, licence fees, bank fees, accounting and legal fees. We recommend you allow for 5-6% of the total purchase price for these costs.

Structuring: Making sure the right entity or person owns the assets is important to minimise tax liabilities and maximise asset protection. We will engage with your accountant from the outset to ensure the most appropriate legal entity is used to buy the motel or park.

Depending on your personal circumstances, this may be a company, a discretionary / family trust, a unit trust, a partnership, an individual or a combination of these.

Paying the right price: The value of a motel or tourist park will be reflected by the market value of the land and improvements (in the case of freehold tourist parks and motels) and the net profit of the business.

Do some research on recent sales of similar motel or parks. Your broker and agent should be able to give you examples.

If you are not sure of value, you can pay for an independent valuation from an industry expert. Your bank may require this in any event as part of your finance approval process.

We have contacts if you need a referral for valuation purposes.

Licensing requirements: To run a business serving food and alcohol you require a food and liquor licence. Do some research on what is required (our section on licensing appears later in this report and has links to relevant sites).

Term sheet

Before the lawyers draft the contracts, it is always a good idea for the seller and buyer to sign a simple one/two page document recording the key commercial terms agreed—e.g. price, deposit, buyer conditions and time frames (this is often referred to as a “heads of terms” or “term sheet”).

Having a term sheet signed can avoid costly lengthy negotiations when the formal contract documents are prepared.

A good agent will know this and encourage the parties to enter into a term sheet.

Be wary of lawyers that quote you a fixed fee to prepare the contracts, but say they can't control the level of negotiation that will be required and therefore have to charge hourly rates for negotiations (rather than a fixed fee). This sort of arrangement incentivises the lawyer to make agreeing the contract documents difficult.

TIP

Tip: make sure the term sheet always states the deal is subject to formal contract documents being agreed and signed. You don't want to be bound until all the details are agreed.

Steps after signing a contract

The contracts

When you buy a freehold motel or tourist park, you will usually sign two contracts—one for the land and improvements and one for the business. The contracts will be interdependent on each other (i.e. you can't buy the business without the land and improvements and vice versa).

If you buy a leasehold motel or tourist park, you will usually sign a business sale agreement only.

The key conditions

The table below includes the conditions and timeframes you would expect to see in typical contracts. The order of the conditions and timeframes shown is also typical.

Requirement / Milestone	Due Date
Contract signed	Day one
Verification of financial records by the buyer's accountant	21 days after signing contracts
Legal due diligence satisfactory to the buyer	21 days after signing contracts
Finance approval satisfactory to the buyer	28 days after signing contracts
Landlord consent to the assignment of the lease (leasehold only)	Before settlement
Approval for transfer of liquor licence and grant of food licence (if applicable)	Before settlement
Settlement	60 to 90 days after signing contracts

Your lawyer will help manage the timeframes and negotiate changes to the timeframes as necessary.

Verification of financial records

The first step after signing the contract is your accountant verifying the financial records of the business (is the net profit what the seller says it is?).

The contract will usually allow 21 days (or a similar time frame) for the financial records due diligence process to be carried out.

The accountant will go to the motel or tourist park to review the seller's business books, records and systems, discuss any issues with the seller and prepare their report.

The report should cover (amongst other things) a detailed break down of annual revenue and expenses for the business and the sustainability of those, occupancy rates and forward bookings, accounting systems and licences in use, service agreements (if any), employee wage costs and asset specific issues like star ratings and usual costs.

If you are satisfied with the report, your lawyer will advise the seller's lawyer this condition is satisfied. If the figures don't stack up, discuss this with your accountant and your lawyer. You can always negotiate a change to the price to reflect the real figures if they are less than what was advertised.

TIP

Tip: make sure you give your lawyer a copy of your accountant's report. Your lawyer should have seen a lot more of these than you have and should be able to give you an opinion on any issues highlighted by your accountant.

Legal Due Diligence

Your lawyer will complete legal due diligence on the land and improvements (if you are buying the freehold), the lease (if you are buying a leasehold business), relevant service contracts, licences, industry group memberships and the business assets.

The contract will usually allow 21 days for the legal due diligence process to be carried out.

The lawyer will obtain copies of the lease and service contracts/licences being assigned from the seller's solicitor or agent and undertake their own statutory searches on the seller, the business and the land.

Your lawyer should prepare a report which covers at least the following:

- overview of the title for the land and any registered dealings on the title and whether the current use of the land is lawful;
- a commentary on the key terms, enforceability and risk issues associated with the lease (for leasehold motels or parks)—refer to the next section of this report for a summary of the key terms in a lease and the issues to look out for in a lease;

- a summary of any other business assets, including plant and equipment and transferable intellectual property (i.e. website domain, business name transfer, trademarks, transfer of phone number etc);
- a commentary on any liquor and food licences associated with the business (if applicable) and how those are transferred to the buyer or a new licence is obtained (as applicable);
- a commentary on any service contracts, software licences, star rating licences or franchise agreements/industry membership agreements relevant to the business and any issues associated with these or the transfer of these to the buyer; and
- a summary of risk issues the legal review has highlighted and steps that can be taken to eliminate or mitigate those risks.

TIP

Tip: Don't accept a report from your lawyer that just repeats what search results already say and highlights risks without suggesting solutions. What you need from your lawyer are recommendations for concrete steps that can be taken to eliminate or mitigate risks highlighted by the legal due diligence.

Finance Approval

Most contracts will allow the buyer 28 days to obtain a satisfactory finance approval. Your broker should manage this process. You may need to supply the broker or bank with your accountant's financial verification report and the lawyer's legal due diligence report.

The bank will usually need a valuation of the land for a freehold motel or park and may also require a valuation for the business.

The bank will take security in the form of a security interest over the business assets, a mortgage over the land (in the case of freehold motels and parks) and a charge over the buyer's interest in the lease (in the case of leasehold parks and motels).

TIP

Tip: Make sure your bank sets up merchant facilities before settlement.

Landlord Consent

For leasehold motels and parks, the contract will be conditional on the landlord consenting to an assignment of the existing lease or granting a new lease (and the documents recording this being signed by all parties).

Typically a lease will allow the landlord 30 days to consider a request for consent to an assignment of the lease. This 30-day period starts when the landlord is provided with the information it needs to consider the buyer's suitability as a tenant and operator of the motel or tourist park business.

Usually, the information required under the lease will be:

- a CV showing qualifications and business experience of the person(s) who will own/control the business;
- business and character references (two of each is usually fine);
- evidence of your financial position (e.g. a statement of assets / liabilities and a copy of the approval letter from your bank (if you are getting finance); and
- a police check for any directors or persons who will be involved in the day to day running of the business (these are relatively easy to get).

When the landlord has this information, it is likely you will need to meet with them.

TIP

Tip: Take the opportunity to meet the landlord to try and get a gauge on your ability to work with the landlord in the future.

Your lawyer will agree the terms of the deed that records the assignment of the lease to you and the consent of the landlord (or the terms of a new lease if applicable) and arrange for those to be signed.

Transfer of liquor licence

When a motel or tourist park is sold that serves alcohol, the liquor licence stays with the motel or park.

The liquor licence needs to be transferred to the buyer and the contract should be conditional on that happening.

The QLD Office of Liquor, Gaming and Regulation (OLGR) can take from 4-6 weeks to process the transfer depending on the type of liquor licence being transferred – so it is important to get the application for the transfer submitted to OLGR as soon as is possible.

The contract should allow up until the settlement date for transfer of the liquor licence.

TIP

Tip:

- Have a look at the OLGR website. It has good information on licences and transferring those.
- Both parties have to sign the application to transfer the liquor licence. The buyer should (via their lawyer) get the application to the seller for signing ASAP after signing the sale contract.

Food licence

As a general guide, any motel or park business that includes preparing or handling unpackaged food for sale to guests needs a food licence.

Food licences are granted by Councils and (normally) are not transferrable, so buyers will need to apply for a new licence.

As with the application for the transfer of the liquor licence, buyers should get their application for a food licence submitted as soon as possible after the contract is signed.

TIP

Tip: Have a look at the Council's website. It will usually have useful information on what type of food licence is required (if any) and how to apply for it.

Star ratings in industry group memberships

If the motel or tourist park you are buying has a star rating or belongs to an industry group or franchise (e.g. BIG4), your lawyer should ensure the relevant licence agreements or memberships are transferred to you on settlement (to the extent they are capable of being transferred).

Make sure you understand the cost of these memberships and the benefits they bring to the operations of the motel or tourist park.

Settlement

Once all of the conditions in the contract are satisfied settlement can proceed.

Your lawyer will make the necessary arrangements for settlement and transfer of the title for the land and business assets to you.

You should be on-site in the week leading up to settlement to take a handover of the business.

Once settlement has occurred, if the contract required it, the seller may provide after settlement assistance and training.

TIP

Tip: Don't rely on after settlement assistance from a seller. Their motivation is understandably a lot higher before settlement.

Key terms in a lease

Read and understand the lease

If you are buying a leasehold motel or tourist park, your right to be on the land and run the business you paid for is governed by the lease. It is critical you understand your rights and obligations under the lease and (ideally) have a good working relationship with your landlord.

For leasehold motels and tourist parks, a large part of our legal due diligence will focus on the lease. If our review of the lease highlights deficiencies, it is often possible to resolve these by way of a simple variation of the lease prior to settlement or have a new lease granted to you on settlement.

We would discuss the options with you at the time.

Some of the key terms and conditions to look for in the lease are discussed below.

TIP

Tip: As mentioned earlier, if you are buying a leasehold motel or tourist park, make sure you meet the landlord and get a feel for the type of person they are - you will need to deal with them to successfully operate and then sell your business in the future.

Premises

A lease can be granted over all of a lot of land, part of a lot of land or part of a building.

It may seem obvious, but it is very important to check the description of the premises in a lease includes all of the land and buildings that comprise the motel or tourist park.

Often it is the case that a certain area (e.g. a car park or seating area) will not be part of the leased land under the main lease document and there may be a separate lease or licence for the additional areas.

Permitted use

Make sure the lease allows you to use the premises for all of the uses, activities and functions you intend to operate as part of the business.

You don't want to buy a business with a plan to add value by providing new services and facilities and then discover the lease does not allow you to do this.

Term and options

For a leasehold motel or hotel business to be saleable, the owner must have the right to operate the business from the premises for an extended period of time.

Most motel or park leases are granted for an initial fixed term with a number of options for further fixed terms (e.g. 10 years with 3 options of 5 years each). The business owner (as tenant) should be able to exercise the options at their discretion if they are not in default under the lease.

A financier lending on the purchase of a leasehold motel business will require a lease (including options) for a minimum term. You should talk to your broker / financier about any specific requirements.

Most financiers will accept somewhere between a 10 to 15 year term (including options) and may structure the loan to correspond with the lease term.

TIP

Tip: If you are planning to sell at any point and the term of your lease (including options) is less than 15 years, it is a good idea to exercise your option if you can and/or discuss adding an additional option term with your landlord. This will add value.

Rent and reviews

Rent is usually a fixed annual amount payable in monthly instalments in advance. Rent will (almost always) be reviewed annually, by either a fixed percentage increase or in accordance with the percentage change in the consumer price index (CPI).

It is also typical for rent to be reviewed to be the current market rent every fifth year or on the exercise of an option.

Look out for ratchet clauses (i.e. clauses that say the rent can't decrease even if the percentage change in CPI is negative or the current market rent is actually less than what is currently payable under the lease).

Also look very carefully at any clauses which say that in addition to annual rent, you pay percentage rent (e.g. a percentage of any sales revenue over a specified benchmark).

Outgoings

If it is a whole of land lease (i.e. you as the tenant are leasing all the land and buildings) you can expect to be

responsible for most or all of the outgoing and services payable in relation to the land and buildings.

Your accountant should review the outgoing budget for the previous three financial years and comment on that in their report.

Maintenance and repair

A lot of landlord / tenant disputes stem from arguments about who is responsible for maintaining / repairing and replacing damaged or worn items or services in the premises (e.g. who has to replace the air-conditioning system if it blows up / who is responsible for fixing cracks in the asphalt parking area).

In a typical commercial lease, the landlord will be responsible for all structural and capital repairs (i.e. if something needs replacing because it is worn or damaged, the landlord must replace it unless the tenant caused the damage).

Motel leases often put more responsibility on the tenant for capital repairs and link maintenance and repair obligations to maintaining star ratings.

TIP

Tip: If you read the lease and it is not clear to you who is responsible for what, discuss the issue with your lawyer. A lot of leases are ambiguous on the point and the landlord may well be agreeable to amending the lease to make it clear.

Security

Almost all landlords will require you to provide some form of security to protect their entitlement to the rent under the lease.

This will normally be a bank guarantee or cash security deposit equivalent to the rent payable for a number of months and/or personal guarantees if the entity you are using to sign the lease is a company or trustee.

Try to avoid giving personal guarantees unless you have sufficient asset protection structures in place.

If you give personal guarantees, ideally these will only apply whilst you are the tenant (and not for the lifetime of the lease if you sell the business).

Assignment / subletting / mortgage

The lease will require you to get the landlord's consent to assign the lease when you sell your business.

A landlord cannot unreasonably withhold its consent, provided the incoming buyer meets the criteria set out in the lease (see our earlier comments about getting landlord consent).

If you think there is any likelihood you will franchise your business during the term of the lease, make sure your lease allows it.

Also—check the lease allows the tenant to grant its bank security over the tenant's interest in the lease. You may not require this to buy the business, but someone who buys the business off you may have a bank that insists on it.

End of the lease

Check what the tenant and the landlord are required to do on the end of the lease.

Even if your intention is to sell the business well before the lease expires (which is almost always the case for leasehold motels), onerous obligations on the tenant at the end of the lease can affect the value of the business on a sale.

TIP

Tip: At the risk of sounding like a broken record – read and understand the lease. Your lawyer's due diligence report should highlight any deficiencies and clearly explain the risks associated with these. Discuss any queries you have with your lawyer.

Useful industry links

Organisation	Link
Business Qld—Liquor and Gaming	https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming
Form 3—Application for a transfer of liquor licence	https://publications.qld.gov.au/dataset/liquor-licensing-and-compliance-forms/resource/23504ee1-204a-4713-935a-69df1878fa25 Always check this is the latest application form
Food licence—Brisbane City Council	https://www.brisbane.qld.gov.au/laws-permits/laws-permits-businesses/food-business-licences
Food licence—Moreton Bay Regional Council	https://www.moretonbay.qld.gov.au/uploadedFiles/common/forms/health/Do-I-need-a-food-business-licence.pdf
Star Ratings Australia	https://www.starratings.com.au/
Caravan Park Association of Australia	https://www.caravanindustry.com.au/