business DEPOT

rent roll transactions
the ultimate legal guide for buyers + sellers

ebook

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get the details right

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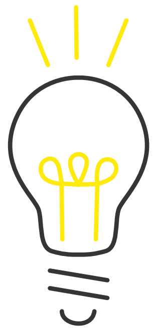
Buying and selling rent rolls is a fundamental aspect of any real estate business.

Whether you are looking to expand your business, reduce your property management division or exit completely, it is important to understand what rent roll transactions are and how they work.

In this ebook, our experts will unpack the key aspects of buying and selling a rent roll from a legal perspective.



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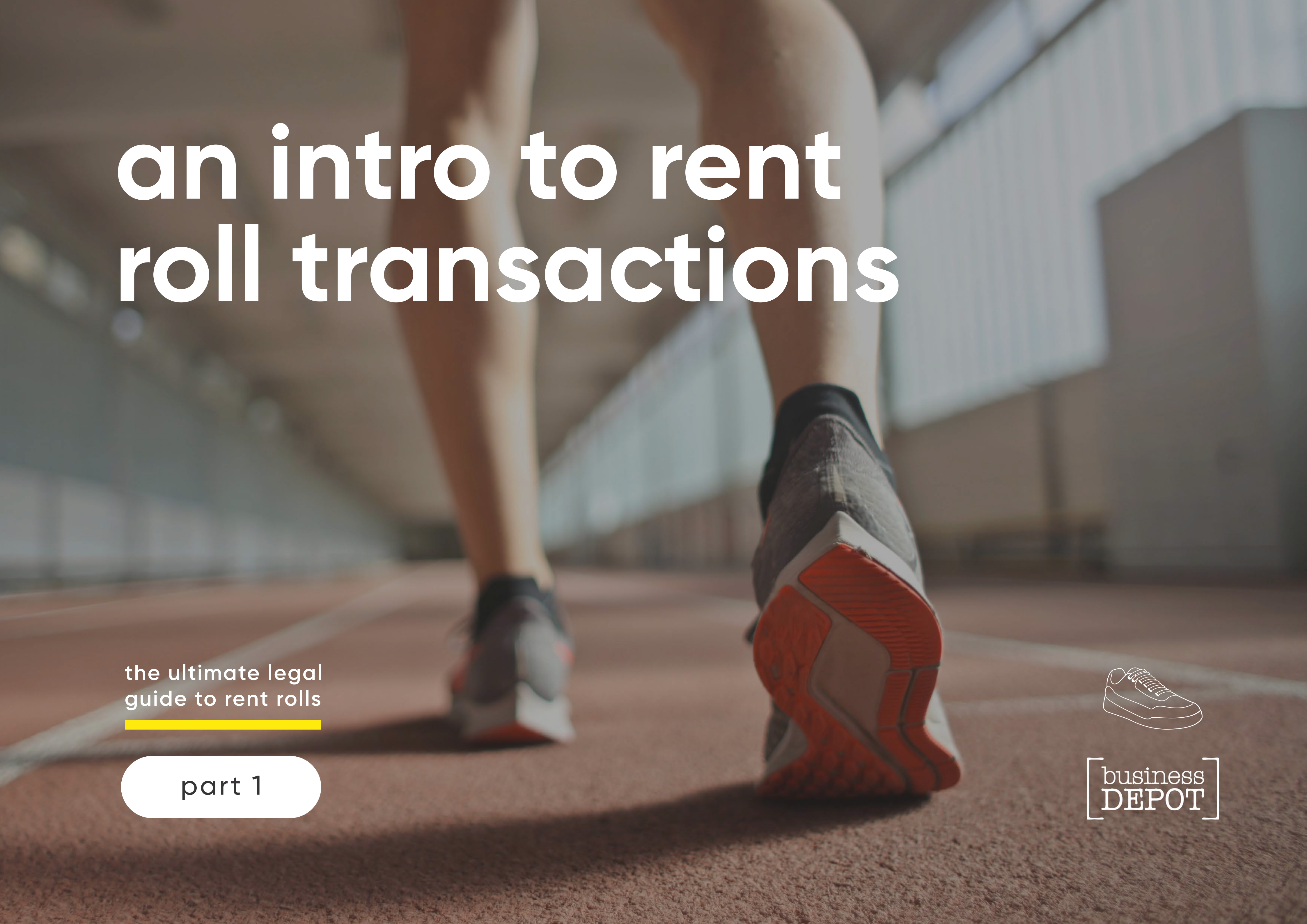

an intro to rent roll transactions

the ultimate legal guide to rent rolls

part 1

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what's a rent roll?

A rent roll is the **property management and rental division** of a real estate agency that manages and deals directly with both tenants and landlords of investment properties.

A real estate agency will manage landlord's investment properties by keeping landlords up to date, collecting rent from tenants and managing any issues that arise. This also includes arranging new leases, negotiating rental amounts and periods and finding new tenants if necessary.

In exchange for such services, the real estate agency is paid a set percentage commission from the rent the tenants pay.

The sale or purchase of a rent roll is therefore one agency selling to another agency multiple management rights relating to specific properties, commonly in the same or similar location areas.

how is a rent roll purchase price calculated?

The calculation of a rent roll purchase price is an agreed multiple of the total annual property management commission of the properties being transferred to the buyer.

This multiple varies depending on the circumstances, such as the location of the rent roll properties, annual average management income [AAMI], market supply and overall system processes of the seller.

If you are thinking about selling all or some of your property managements, then it is crucial to ensure you obtain an appraisal of your rent roll to ensure this multiple is understood.

a buyer and seller must enter into a tailored agreement that outlines the terms of the sale.

Prior to entering into an agreement, it's important to consider the following:

legal considerations prior to agreement

terms sheet

This document outlines the terms of the deal agreed between the parties prior to entering into an agreement.

non-disclosure agreement [NDA]

When a buyer conducts their due diligence investigations once the agreement has been entered, the buyer will be privy to confidential and sensitive information about the seller's business. To ensure the protection of the seller's confidential information, an NDA may be prepared [or also included in the Agreement] to ensure such information is protected [whether or not the sale is effected].

business premises

Does the buyer wish to take over the premises of the seller upon purchasing the management rights? If so, relevant documentation such as a lease or lease transfer will need to be prepared and consent from the landlord will be required.

employment agreements

If any employees are being taken over from the buyer.

sales authorities

If the buyer may purchase properties that are on the market for sale and if so, what the purchase price is for the sales.

management authorities

It is imperative that sellers ensure all management documents in relation to rent roll properties are up to date and compliant with legislation, noting this differentiates between jurisdictions.

other considerations

Further documentation will need to be completed if business names, trademarks, vehicles or other intangible assets wish to be transferred with the sale of the rent roll properties.

common terms of a rent roll agreement

handy tip

Once you've unpacked the considerations on the previous page, it is vital that a **lawyer who specialises in rent roll transactions** is engaged to draft the rent roll agreement and consider all aspects of what the agreement will entail.

Engaging a lawyer is important considering the complexities of a rent roll transaction.

Common terms to consider in the agreement [but are not limited to]:

- Conditions of sale, whether due diligence, finance, franchisor approval or other conditions apply
- Key due dates
- Multiple to calculate the purchase price
- Whether the buyer can take over any employees and if so, what is the adjustment mechanism in favour of the buyer to do so
- Restraints such as non-compete or non-solicitation on the seller
- Retention period and amount [to be expanded] click here to read
- What is classified as a lost property during retention
- Whether any other assets are included in the sale [for example leases, business equipment, plant and equipment]

tax + duty considerations

There are also many tax implications to consider when buying or selling a rent roll.

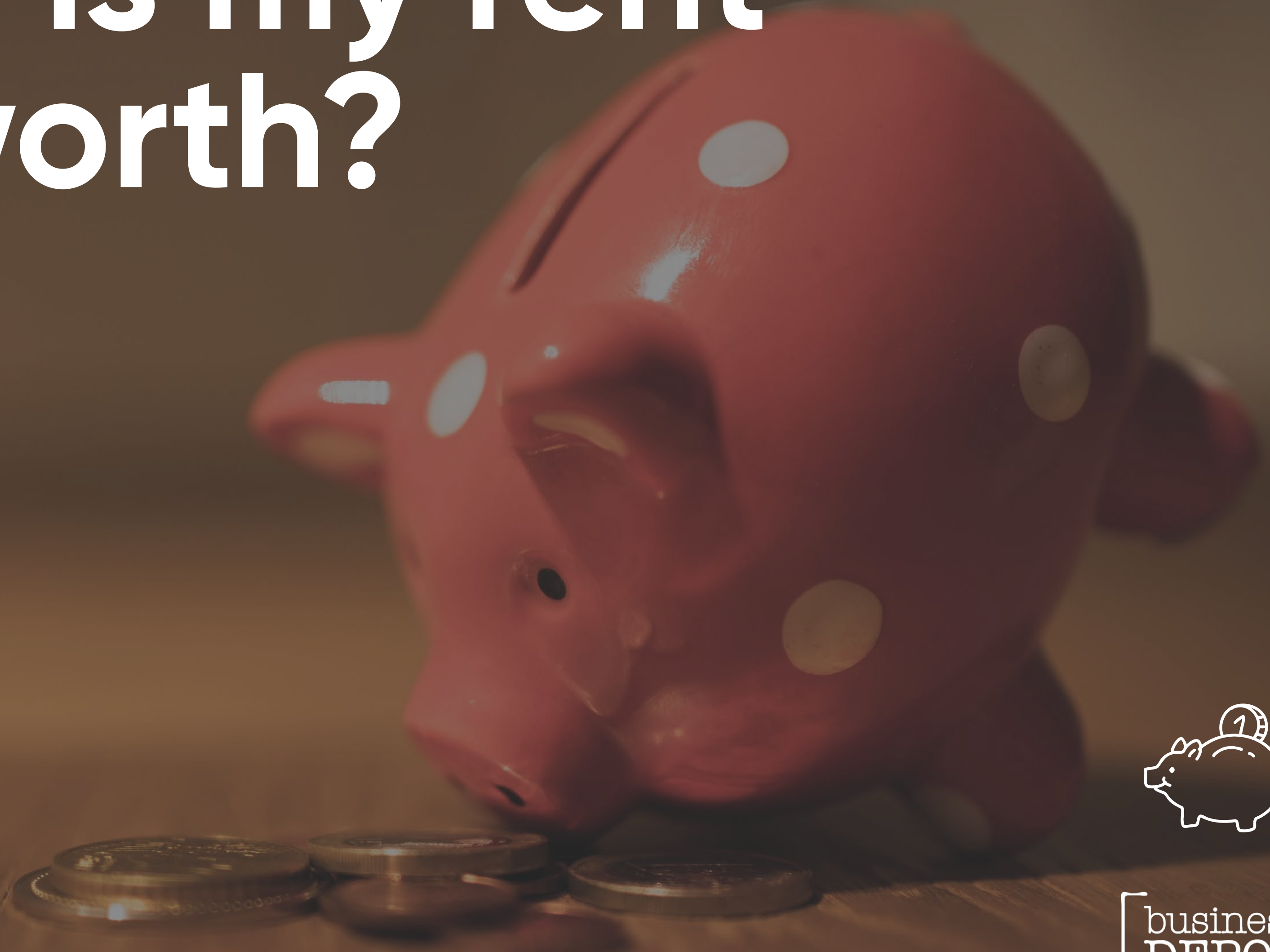
The disposal of a rent roll will typically be subject to capital gains tax [CGT]. Noting this, potential CGT or small business concessions may be available to reduce the capital gain and the tax payable on the sale.

Goods and services tax [GST] may also be applicable to the transaction depending on the nature of the sale. If a sale of a rent roll is considered a 'going concern' then the sale is GST-free. To satisfy this criteria, the sale of the rent roll must be considered the sale of a continuing business with everything necessary for the ongoing operation of the business being sold to the buyer.

A buyer will also be subject to paying transfer duty with respect to a rent roll purchase that is calculated on the purchase price of the rent roll. If a second settlement also applies this will need to be assessed and further duty may be payable.

It is strongly recommended that separate accounting advice is sought in advance of any disposal or purchase so that you are aware of the tax and duty implications. For more on this, jump to page 25 where Accounting Director, Craig Harrison unpacks duty and tax considerations in rent roll transactions.

what is my rent roll worth?



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basic appraisal of a rent roll

Almost the first question asked by rent roll owners when they contact us is **"what's my business worth?"** While there is a simple formula for estimating value, appraising a real estate rent roll business can be a complex process and there are many factors that will impact the result and influence what a buyer is prepared to pay.

At its simplest, the value of a rent roll is determined by:

STEP 1

AAMI = weekly rent / 7x365 management fee [ex-gst]

STEP 2

AAMI X number of properties X pricing multiple

AAMI = average annual management income

number of properties

This is the number of properties/lettings being sold in the portfolio, remembering that multi-letting properties are included as the total number of lettings and not just the one address.

pricing multiple

This is expressed as say **$3.00** per every **$1** of management fee income. For example, if a portfolio had **$400,000** in annual management fees, then the estimated price for that portfolio would be **$400,000 x $3.00 = $1,200,000**.

If you need a hand with finding your AAMI or pricing multiple, you've come to the right place- simply contact our **agency broking experts** to get started.

While that all looks pretty straight forward, the real question is what are the factors that influence the value drivers of the pricing multiple and what buyers are prepared to pay?

There are several factors buyers will consider when making an offer to puchase a rent roll, including:

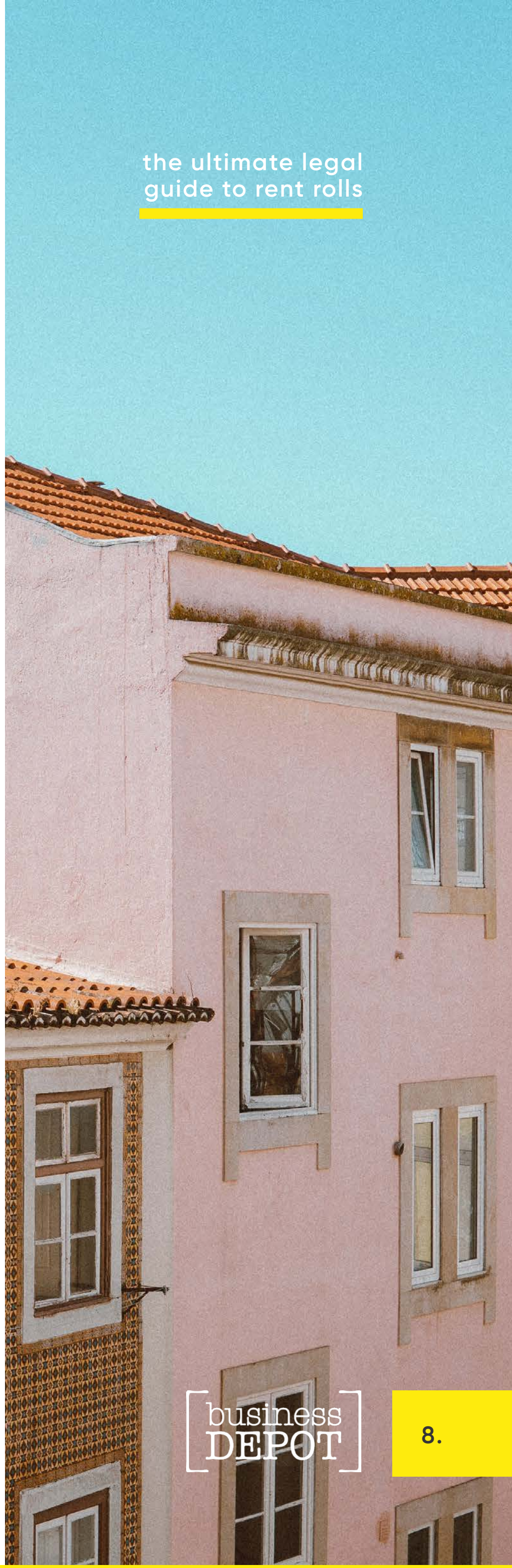
1. AAMI

As noted above, the higher the AAMI, the better. A higher AAMI means higher income to the owner and that will help drive a higher pricing multiple.

2. location of the portfolio

Some areas will be more sought after than others by buyers [think inner city suburbs and growth regions for example].

There are also differences in value between metropolitan and regional areas, since there are generally fewer regional buyers and financiers may not lend the same amount for regional businesses compared to metro locations.



3. property geography

How spread out are your properties? As with everything in real estate, location matters and you need to not only consider the location, but also the geographical spread of the properties.

Think of it this way, a condensed rent roll means less travel between properties, which is easier and cheaper to manage than one that is spread out.

4. property management fees

The management fees charged by the agency for handling the properties can impact the value of the rent roll. Higher management fees may indicate a more profitable business, while lower fees may indicate that business has been 'bought' and landlords are perhaps not as loyal to the business.

5. multiple property owners

A concentration of landlords that own multiple properties [say 4 or more] will negatively impact the value of a rent roll, as losing one landlord will mean losing multiple rental properties.

For example, if a portfolio had 140 properties and had 2 landlords with 8 properties, one with 6 and 2 with 4, that's 30 properties or 21% of the portfolio sitting with 5 owners.

6. rent arrears + vacancies

The presence of significant rent arrears or high vacancy rates can lower the value of a rent roll due to potential cash flow issues and added challenges and workload for the owner.

7. owner's involvement + property management [PM] staff

keep in mind!

How involved is the owner with their landlords? Do they make the effort to keep in contact, or is it all left to the PM team?

If it's the latter, are the PM team willing to work for a new owner, or is there a risk that they will leave?

Given this risk, it's essential to understand how the rent roll is managed and what can be done to provide a stable transition.

8. other fees + charges

The other fees and charges paid by landlords [that form part of the rent roll income] will be assessed by buyers and potentially impact what they are prepared to pay.

These fees include letting fees, administration fees and inspection fess which can be around 20% of the annual management fees charged.

These fees are not directly included in the pricing formula above, but if an agent has been successful in legitimately recovering costs through additional fees, then this can add significant annual income.

9. industry conditions

The overall state of the real estate market, rental demand and the broader economy will also play a role in what a buyer is prepared to pay.

10. growth potential

The potential for growth and expansion of the rent roll business, such as through marketing efforts, acquiring new properties, or expanding the property management services, can add value.

11. comparable sales

While it is difficult to obtain actual comparable sales information… doing your homework to understand what is on the market [as well as the bank's lending attitude to certain locations and business types], will provide a baseline for your pricing considerations.

12. seller's intention post sale

What's happening with the actual sellers of the business? Are they retiring and getting out of the business, or are they staying in business in the local area which could potentially create a retention risk for properties in the future?

Having considered the factors above, what you can see is that with each of these, there is a risk the buyer considers as they evaluate what multiple of management they are prepared to pay to earn that revenue into the future.

Understanding these factors and doing what you can to avoid potential risks in the eye of the buyer, will give you the best chance of maximising your price when it's time to sell your rent roll.

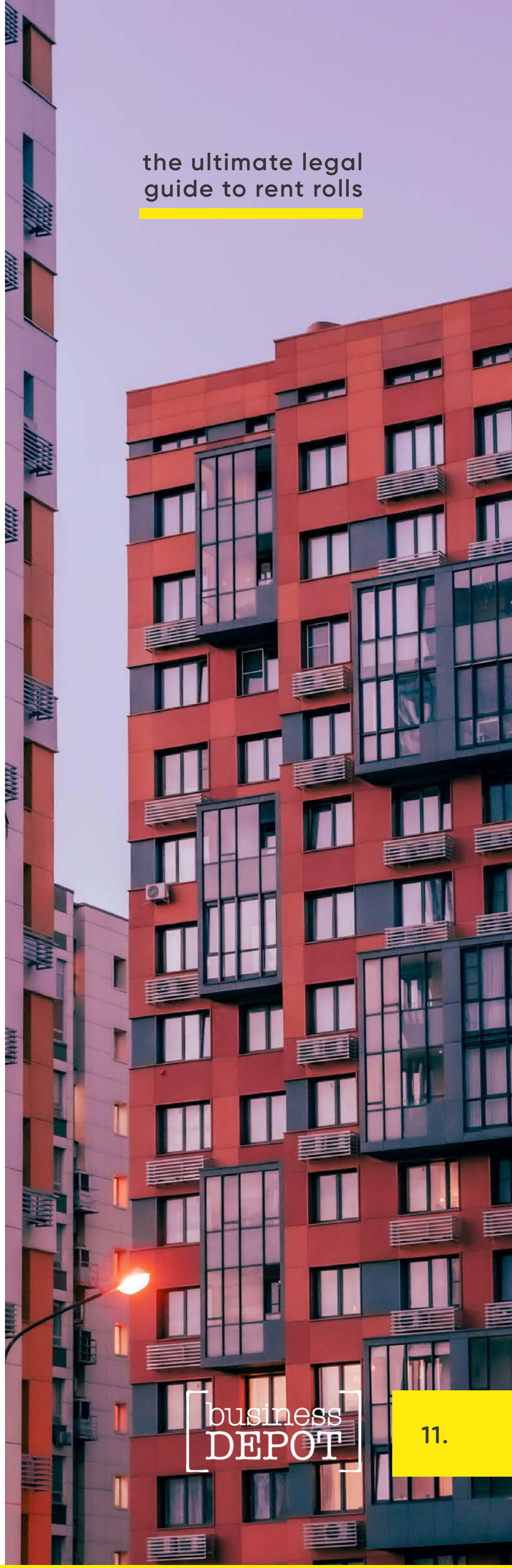
professional advice

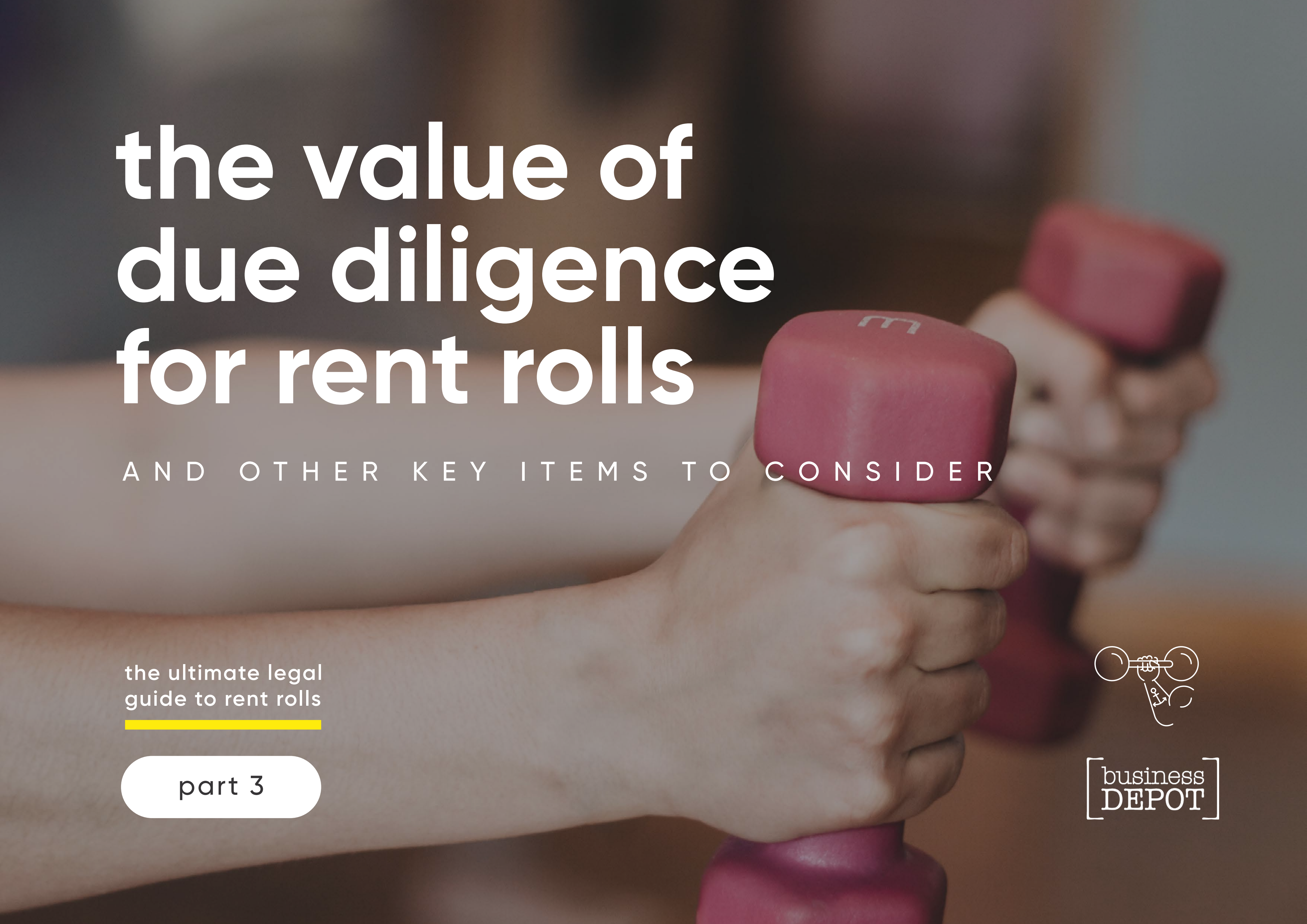
handy tip

To achieve the best result, it's essential to consult with **experienced business brokers, real estate professionals, or financial advisors** who have expertise in appraising rent rolls.

Professionals can help you conduct a thorough evaluation of the portfolio to arrive at a fair and considered price based on the specific attributes of the rent roll business.

our team of real estate specialists can help!





the value of due diligence for rent rolls

AND OTHER KEY ITEMS TO CONSIDER

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part 3

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Whether you're an experienced owner of a rent roll looking to expand your portfolio or are entering the property management sector for the first time, the importance of completing thorough due diligence before buying a rent roll cannot be understated.

what is due diligence?

Due Diligence refers to the process of investigating the economic, legal and financial circumstances of a business. In the context of a rent roll transaction, due diligence provides an opportunity for the buyer to check the financial and management records of the rent roll portfolio.

the buyer's perspective

keep in mind!

The **timing and scope** of the buyer's due diligence investigations will vary depending on the size of the target rent roll and scope of the overall transaction.

It's common for a buyer to conduct preliminary due diligence before signing the rent roll contract. However, the bulk of the buyer's due diligence investigations will generally take place after the contact is signed with a standard due diligence clause typically allowing a due diligence period ranging between
14 – 45 days.

scope of the due diligence investigations

The contract should specify the permitted scope of the buyer's due diligence investigations by clearly stating what the buyer can and can't investigate. The seller is expected to assist the buyer by providing access to all financial and management records of the rent roll business and the buyer is expected to maintain the confidentiality of any material disclosed during due diligence.

benefits of a due diligence consultant

We encourage a prospective buyer to engage a due diligence consultant to conduct due diligence on behalf of the buyer. A rent roll is a unique business asset which has exposure to a range of regulatory and commercial risks specific to the property management sector. Accordingly, a suitably qualified professional with relevant industry experience can provide an enormous amount of value to the due diligence process.

inspection of property management files

There is no single definitive checklist for conducting a satisfactory due diligence investigation. However, the value of a rent roll business primarily resides in the management appointments held by the seller. Therefore, the most important component of a buyer's due diligence investigation will be the inspection of the seller's property management files. Such as:

- the electronic and physical files evidencing the agency appointments and tenancy agreements for each rent roll property
- the electronic and physical records evidencing the entry condition report and confirming that routine inspections have been conducted on schedule
- the bond and key position for each rent roll property
- compliance with pool safety certificate and smoke alarm legislation
- all financial and management records of the overall rent roll business

other items to consider:

benefits of a valuation

If the scale of the seller's rent roll portfolio is substantial, the buyer should consider engaging a **professional valuer** to conduct an independent valuation of the rent roll portfolio.

An independent valuation can provide valuable insight into the overall sustainability of the management appointments that underpin the rent roll.

Further, an independent valuation is an excellent way of assessing whether the purchase price and multiplier proposed by the seller for the rent roll is fair and reasonable from a commercial perspective.

the seller's perspective

Also, the seller will be obligated to disclose sensitive information about itself and its rent roll business to the buyer. A key priority for the seller will be to ensure this information is kept secret and is protected from unwanted disclosure or misuse by the buyer.

This is why entering a non-disclosure agreement or ensuring your rent roll agreement is drafted by an experienced solicitor is crucial.

The seller should insist that the contract includes sufficient protections for the seller. In more complex cases, the seller may even insist on a separate confidentiality agreement to protect its interests.

transfer of management authorities

To provide understanding, an agent cannot provide property management services if they have not been validly appointed by the property owner. In Queensland, a form 6 – Property Occupations must be completed in accordance with the requirements of the Property Occupations Act 2000 [QLD] and signed by the property owner before an agent can lawfully provide management services. If an appointment does not comply with the legislative requirements, the appointment is considered ineffective.

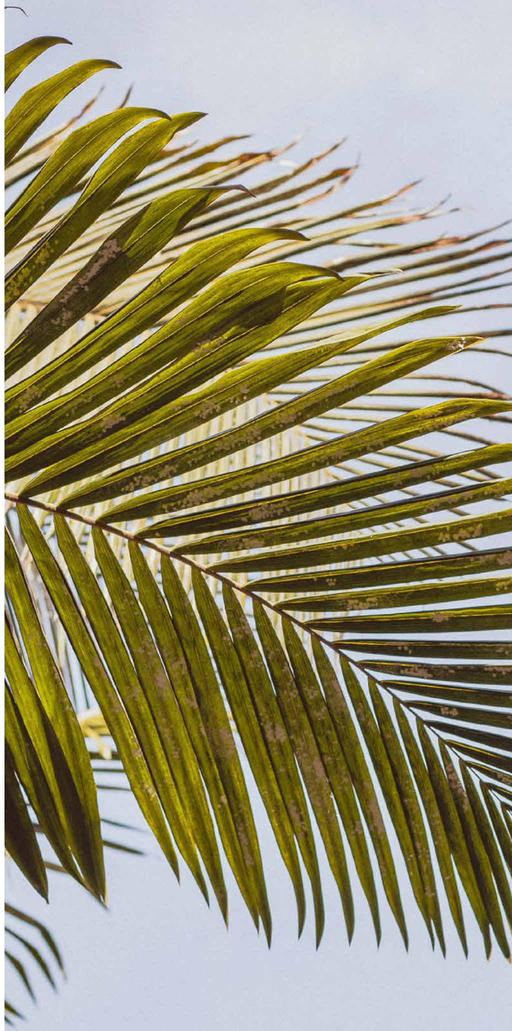
the benefits of a form 6 appointment

handy tip

In Queensland, an appointment is automatically assignable if it is supported by a Form 6.

There is no requirement to obtain consent of the property owner to assign the form 6 appointment to the buyer provided that the existing terms remain unchanged.

The buyer is required under the Property Occupation Act to give notice to each property owner within 14 days of settlement, which must comply with the elements of section 113 of the Property Occupation Act.



drafting a rent roll agreement to consider post transaction challenges

3 IMPORTANT THINGS TO CONSIDER

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part 4

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things to consider post transaction

There are key terms to consider when drafting a rent roll agreement to ensure parties are adequately protected should challenges arise.

Once the buyer and seller have come to a mutual agreement on the key terms of the transaction, it is important that a solicitor who specialises in rent roll transactions prepares an agreement that not only captures the basic terms, but it also protects the parties' rights and obligations **post completion**.

To govern the post transaction relationship of the buyer and seller, the following 3 aspects must be considered in a rent roll agreement:

- Seller's representations and warranties,
- Seller and Seller Representative restraints, and
- Retention mechanisms [that we'll unpack in part 7].

1. seller representation and warranties

Under a rent roll sale, in exchange for the purchase price, the buyer receives ownership of the business assets [which includes all property management agreements and associate management files].

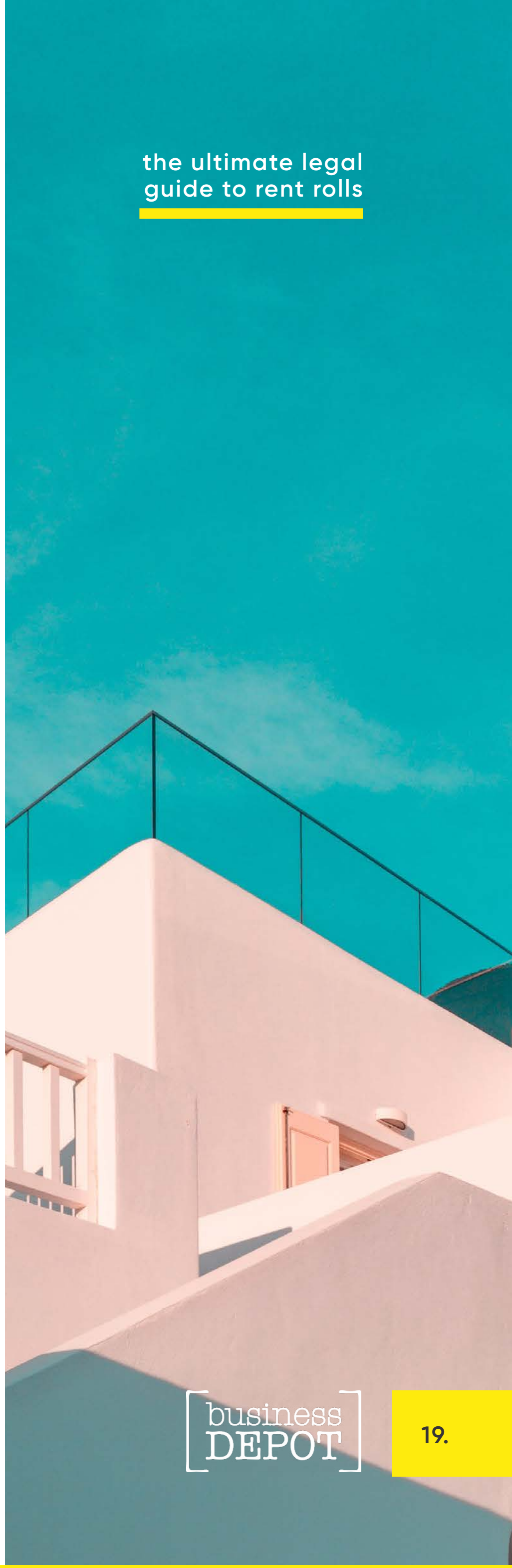
In addition to the buyer's due diligence which allows the buyer to mitigate transaction risk by undertaking enquiries on the seller's business assets, the seller should be required to:

- make representations as to the quality and condition of the business assets,
- warrant that the seller's representation are true and correct at the date of the contract and at the date of completion, and
- indemnity the buyer if the buyer suffers a loss as a result of a seller representation being false or untrue.

The exact form of the seller representations will be negotiated by the parties' solicitors, but the general base expectation is that the seller warrants that each property management authority being sold to the buyer:

- is valid, binding and enforceable in accordance with its terms, including being signed by the property owner and seller,
- is on the correct and updated Form 6 [Noting Form 20s are no longer assignable under legislation] and
- is provided to the buyer complete, accurate and contains the entire agreement between the parties to it concerning its subject matter.

Well drafted seller warranties will expand substantially on the above, with further representations and statements specific to the management authority.



Consideration will also need to be given to the business assets being sold and the nature of the transaction. Specifically:

- if the buyer is taking over seller employees, the buyer would be wise to seek warranties from the seller as to the seller's compliance with workplace legislation,
- if the rent roll is transacted as a share sale, substantially more expansive warranties should be requested that incorporate taxation warranties and taxation indemnities, and
- if the buyer is purchasing plant and equipment, then it is imperative the seller should warrant the quality of such items being sold to the buyer.

2. restraint to protect the goodwill of the property management being acquired

The buyer must have confidence that the seller and seller's representative are not going to turn around after the transaction and erode the goodwill of the acquired properties. To combat this, the agreement should include an obligation and restraint on the seller and seller's representative as follows:

- to not to sell, rent or manage any properties purchased by the buyer, including not contacting, soliciting or approaching owners of any such properties [non-solicit];
- to not to employee any staff [for a specific period of time] that are employed by the buyer as part of the transaction and
- to not compete with the buyer's business in a defined restrained area post settlement [non-compete];

While the non-solicit restraint is non-negotiable for a buyer, the non-compete restraint can be optional [and not included in the agreement] as it's not uncommon for some sellers to dispose of only a portion of their rent roll portfolio.

Any buyer who is acquiring a rent roll without employing the seller's property manager will also need to consider the potential risks in doing so. Here, there is little to no ability for the buyer to restrain a seller's property manager from engaging in any of the above items listed.

handy tips

As such restraints could be arguably unenforceable if the seller's property manager has not received any consideration for the transaction.

On the other hand, if a buyer is employing a seller's property manager, consideration should be given to the adequacy of the non-solicit restraints in the seller's property manager employment contract.

The complex nature of a rent roll transaction requires specialist and tailored drafting.

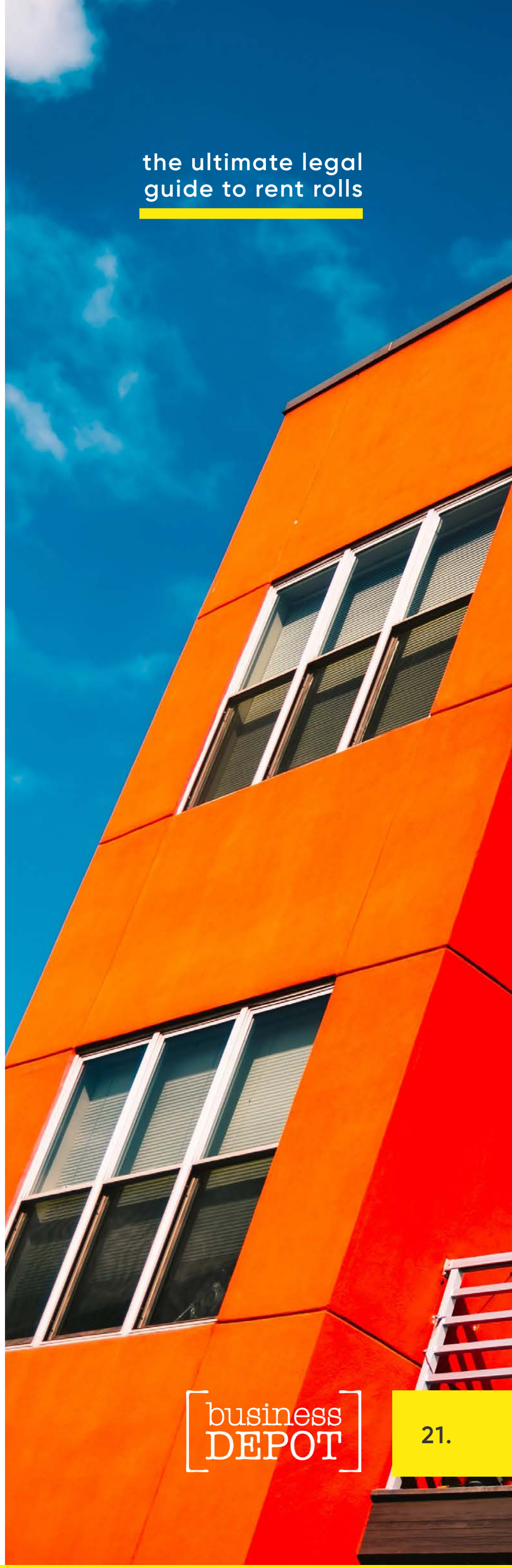
In order for the buyer to gain protection on their purchase:

- a clearly defined set of seller's representation,
- the seller must indemnify the buyer for losses where the buyer relied on the seller's warranties that were subsequently found to be untrue, and
- a clearly drafted seller restraint detailing what the seller and the seller's representative will not do.

To navigate this, it is vital that parties do not enter into a rent roll agreement without receiving the appropriate legal advice.

3. Retention

The third crucial item to consider post transaction is retention mechanism. Plesase flick to part 7 on page 31 where we unpack this part.



gst going concern and tax

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part 5

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Like many things, the acquisition of a business [in this case a rent roll] can be subject to GST. While in most cases a buyer of a rent roll will be able to claim back the GST paid on their next Business Activity Statement [BAS], the implications on cashflow for the buyer can be significant.

is GST applicable to rent roll acquisitions?

It's often not until contracts for a rent roll acquisition are being reviewed that the GST consequences of acquiring the rent roll are considered. As the experts, we often get asked by buyers whilst they are reviewing the contract whether the acquisition will be a GST Free Going Concern.

The upside of an acquisition being a GST Free Going Concern is that an additional 10% of the purchase price will not need to be financed at settlement by the buyer.

It's also important to note in states where business sales are subject to transfer duty, it's the GST inclusive consideration that is used when calculating transfer duty.

Although as an acquirer, you are likely to receive the GST component of the acquisition price back on your next lodged BAS, the extra transfer duty you incur on the GST component will not be refundable to you.

It's often the first condition of the list [on the right] that's the most difficult to satisfy. There is no clear definition of what "all things necessary" means in the context of a rent roll sale.

Although not exhaustive, the list below are some of the items that can be included as being necessary to continue to carry on the business:

- Management agreements and property data [essential in order to make an acquisition work]
- Transfer of lease of business premises
- Transfer of business names and trademarks
- Employment by purchaser of some or all of the vendors property management staff
- Vehicles used by the property management business to make inspections, do open homes etc
- Transfer of phone numbers or email addresses associated with the property management business

In order for an acquisition of a rent roll to be a GST Free Going Concern there are a few conditions that need to be met:

The seller supplies all things necessary to continue to carry on the business

The seller continues to operate the business until the day of sale

The purchaser is registered for GST

The seller and purchaser have agreed in writing that the supply is a going concern

Not all of the previous are essential to make an acquisition a Going Concern, but the more items you can tick off the more likely the transaction will be considered the supply of a Going concern.

The fourth condition is usually dealt with in the clauses of the sale contract by both parties agreeing that it is a going concern. There are also usually further clauses that will deal with the later payment of GST should the transaction be found by the tax office to not be a going concern.

keep in mind!

It's critical to discuss these clauses with both your lawyer and accountant to understand how they will apply to you.

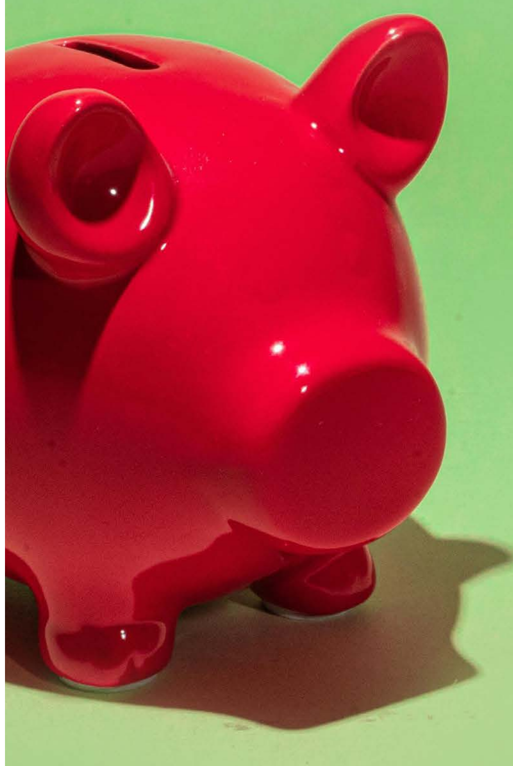
get the details right

It's essential to talk as early in the purchase process as possible to your accountant, lawyer and financier to understand how GST and transfer duty will be applied to your rent roll acquisition.

While paying an additional 10% in GST on the acquisition may only have a cashflow impact until the lodgement of your next BAS, a large rent roll acquisition will have a large GST component, which could make that cashflow impact significant.

Depending on the cash position of your business, it may also require you to get an additional loan from your bank to initially fund the GST component of the acquisition.

Where possible, an acquisition of a rent roll on a GST Free Going Concern basis will mean that your business will pay less transfer duty [in jurisdictions where applicable] on purchase and have a less significant cashflow impact to the ongoing operations.



tips to simplify completion

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part 6

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The sale agreement has been signed, you've made it through due diligence, your finances are sorted and completion is rapidly approaching; so what else should you be doing now?

The answer? More than you might think...

Part 6 addresses the key steps you should take in preparation for completion [so you won't be caught out].

calculating the purchase price

As simple as it might sound, the calculation of the purchase price is not always straightforward.

Typically, in a rent roll transaction, the purchase price for the rent roll assets are calculated by quantifying the total management fees derived from the rent roll properties managed at completion, over a particular period [usually 12 months] and multiplying that figure by an agreed multiplier.

for example

management fees for preceding 12 months:
$300,000 x 3 [multiplier] = $900,000

Given that weeks, if not months, may have passed since the signing of the sale agreement, it's important that the seller provides an up-to-date list of managed properties prior to completion for the calculation to be accurate.

It's also worth remembering that the above calculation may be just the starting point, as often this figure will need to be adjusted further to take account of other assets included in the sale, such as employee entitlement adjustments and premises rent.

handover documentation

Just as important as knowing the purchase price is, knowing what you will be getting for paying it is important. As with business sales generally, at completion the seller typically hands over to the buyer all things necessary to carry on the business.

In a rent roll transaction, this typically includes a large amount of documentation, including [but not limited to]:

- An up-to-date list of managed properties
- All compliant appointment of agent forms
- Current tenancy agreements for each property
- Application forms completed by each tenant prior to the commencement of their current lease
- Current entry condition reports signed by each tenant
- Bond information extract for all bonds held in relation to the properties in the rent roll
- Previous property inspection reports
- All Notice[s] to Remedy or Notice[s] to Leave and pending court notices that are relevant to the properties for the last twelve months
- Previous property inspection reports
- Completed and signed change of Lessor or Lessor's agent signed by the seller
- Tagged complete set of keys for each property
- Any other items in the Seller's possession with respect to any Rent Roll Properties to be transferred

Buyers should also inspect and cross-check all of the documents provided by the seller to ensure compliance.

It's typical for the sale agreement to only require the buyer to pay the purchase price at completion for managements where each of the required documents is has been provided.

Sellers therefore need to be proactive in ensuring that any gaps in the records [insofar as they can be] are filled prior to completion.

notifying landlords

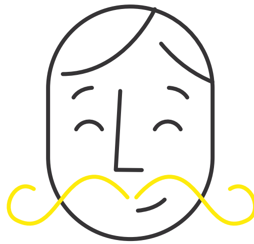
While certain jurisdictions require the landlord to formally consent to the transfer of a rent roll management to the buyer, others [like Qld] do not.

In such cases it is preferable and often a requirement under the sale agreement, for the parties to formally notify the landlords of the upcoming completion.

This is typically done in the days leading up to completion, in a form acceptable to both the buyer and seller and serves two main purposes:

1. Notifies the landlords of the name and details [including bank account details] of the incoming manager
2. Helps to ensure a smooth transition, thereby streamlining the administrative processes of the buyer in taking over the rent roll

The timely issuance of notices to landlords can also help to minimise lessor discontent reducing the likelihood of the loss of managements during the retention period.



other requirements

In circumstances where the sale includes assets other than the rent roll itself, the parties need to ensure that those assets are effectively assigned as at completion.

These often include assets such as

- premises leases,
- franchise agreements,
- items of plant and equipment, and
- employees.

The sale agreement will typically make the securing of these transfers the responsibility of the buyer, with an obligation of the seller to provide assistance where reasonably required.

With any business sale, the buyer is entitled to receive all assets free from any encumbrances or security interests and so the seller should ensure that releases of any such encumbrances or interests [including those registered on the PPSR] are organised to be released at or before completion.

preparation is key

Completion of a rent roll sale doesn't need to be stressful. As with most things in business, preparation is key!

For sellers, ensure your house is in order and that you have all necessary documents and security releases ready to hand over.

For buyers, be proactive in the transition of the business, ensuring you've lined up all other assets and most of all…have the money ready to go!

what happens after completion?

O F A R E N T R O L L S A L E

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part 7

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There are many considerations every buyer and seller should be aware of after settlement of a rent roll transaction has occurred.

relationship building for the buyer

As a buyer, your focus is to build relationships with the landlords and tenants that form the property management portfolio you have just purchased.

This includes:

- Introducing your real estate business to all landlords and tenants as soon as possible after settlement to ensure landlord's feel their investment property is going to be well-managed and given priority,
- Rectifying any issues that were flagged during your due diligence investigations, and
- Ensuring any maintenance jobs outstanding for properties are continued without any delays.

buyers – remember to inform every landlord

The buyer has strict obligations to comply with the Property Occupation Act 2014 by issuing a written notice to every landlord within 14 days of settlement.

This written notice to every landlord must include:

- The buyer's name, contact details and registered office address,
- Confirmation the appointment has been assigned without changing the terms of the agreement, and
- Confirmation the appointment may be revoked by a landlord by providing at least 30 days' notice of the revocation to the buyer, unless the parties agree in writing to an earlier day for the appointment to end.

We strongly recommend **you reach out to our team if they require help ensuring their notice is compliant**, as penalties apply for an invalid notice [or failure to issue a notice within the required timeframe, or at all].

sellers – remember your restraints

Often the Rent Roll Agreement will have a post-completion restraint on the seller [and directors if the selling entity is a company].

It's important for sellers to be aware of their restraint obligations, which often include being restrained from contacting or soliciting any landlords of properties that formed part of the sale, selling any rent roll properties for a duration of time [or selling any properties], or being engaged in the property management business at all.

don't forget retention

One of the most important post completion considerations for buyers and sellers is the retention process.

It is crucial that the agreement between the parties adequately deals with this process.

Commonly, the standard process in rent roll transactions involve the seller's lawyer holding a percentage of the purchase price [known as the retention percentage] in their trust account for a period of time after settlement [known as the retention period].

This allows buyers the opportunity to seek a refund for properties lost during the initial transition period, noting it is likely some landlords may not wish for their property management to be assigned, or may wish to sell or move back into the property during this time.

Below unpacks common terms and details involving the retention process, noting however this is always subject to the terms of the agreement.

1. retention percentage

A standard retention percentage is 20% of the purchase price. It is sometimes common to apply a different percentage to landlords who own multiple properties being sold to the buyer [or alternatively, extending the retention period in part 2 instead that relates to those multi owner properties].

for example

If a landlord included in the property portfolio owns 10 property managements, if this landlord terminates their management with the buyer, the buyer has automatically lost a large chunk of the retention percentage on one landlord's loss.

To combat this, agreements often separate retention percentages so a higher percentage applies to a multi owner, with a standard 20% retention still applying to non-multi owners.

2. retention period

A common retention period is three months after the settlement date.

Depending on the terms of the Agreement [and receiving the appropriate legal advice], the retention period may also include an extension of retention mechanism.

Essentially this means if a landlord provides a written intention before the retention period to move back into the property or sell, then the purchase price of those properties are held in the seller's lawyers' trust account for a further duration of time to determine whether the properties are actually lost in the future (ie whether they actually sell or the landlord does move back into the property]. This retention extension period can vary from as little as one extra month, up to nine extra months. However, the ability for a property to satisfy falling within this retention extension is subject to the buyer providing a valid retention claim [as unpacked in section C. below].

3. retention notice claim

Before the retention period falls due, the buyer must submit to the seller their retention claim. This sets out how many properties they lost during the retention period, and how much of the retention percentage they wish to be reimbursed to the buyer.

Commonly, the buyer [or buyer's lawyer] must email to the seller [or seller's lawyer] by 5pm on the retention date, a notice setting out each property lost, the reason of the property loss and the purchase price associated with that property. Evidence must strictly be attached to this notice, which clearly shows evidence of the landlord terminating their management with the buyer on or before the retention date. An example of this is an email sent from the landlord to the buyer confirming they terminate their management.

Important

Standard agreements include incredibly strict notice obligations on how the buyer is to submit to the seller a refund under the retention process, and failure to comply with the notice requirements by the due date can completely invalidate the buyer's entire retention claim, meaning they are entitled to nothing.

This is the main reason why retention disputes are on the rise and becoming more frequent with rent roll transactions. Noting this, we highly recommend engaging our legal team to act on your behalf during the retention process.

4. what is claimable under retention?

The lists on the next page unpacks common circumstances that allow a buyer to obtain a refund and what is excluded [subject to complying with the notice requirements above, and noting these are not exhaustive lists and always depend on the terms of the agreement)

what is claimable under retention?

often refundable	often not refundable
a landlord has terminated their management with the buyer before the retention period ends,	the property is lost due to any mismanagement of the buyer, and
a property has sold and the buyer has not taken over management from the new owner, nor acted as sales agent for the sale,	the buyer acted as sales agent for the sale of the property which derived financial benefit.
a property was vacant at settlement and remains vacant at the end of the retention period, and	
the property is unfit for living (for example, flooded).	

thanks to our contributors

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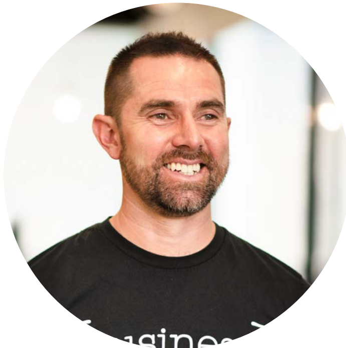

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we're here to help you!

We've got a unique insight into what fuels the fire in your real estate business. It's this insight that allows us to be the leading advisory, agency and rent roll broking, benchmarking, bookkeeping, business advice giving, real estate accountant who can even help you with marketing consulting - all in the one place that will raise the bar of your real estate business.

If you're looking for guidance on your rent roll transaction, contact our legal team.

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