

# Sydney Pen Club

*Advantage Partnership Lawyers*

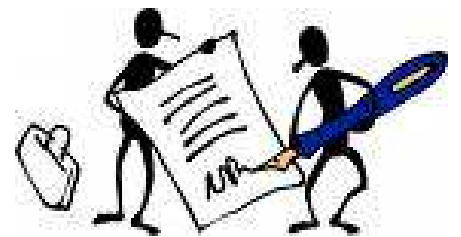
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This Month:



## How to check your contract

## ABC for Least Contracts



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## How to Check your Contract

If you intend on or have entered into a contract and you want to ensure that the contract is valid and can be enforced legally, you must ensure that five elements (which are listed below) are satisfied. If these elements are met then the contract will be considered valid.

### **How do you define a contract?**

A contract can be defined as a legally binding agreement that occurs between two or more parties which creates and defines the obligations between the parties who have signed the agreement. A contract can exist in writing or can exist as a verbal agreement - with both being enforceable by the law. However, it is harder to prove the existence of a verbal contract than it is a written one.

### **What makes a contract valid at law?**

In order for a contract to be valid and recognised by the law it must satisfy the following 5 elements:

**1. there must be an offer**

A promise must be made to do or forbear from doing something within a certain time period.

**2. the offer must be accepted**

The offer must be accepted through either a promise or performance.

**3. all parties must provide consideration**

There must be a legal and adequate inducement given in exchange for the promise to do something that one is not legally required to do or to forbear from doing something that one is legally allowed to do.

**4. there must be an intention from all parties concerned to create legal relations**

All parties must intend to be legally bound by the contract. There is a presumption for commercial agreements that parties intend to be legally bound unless expressly stated otherwise.

**5. all parties must possess legal capacity to create a contract**

The parties to a contract must have the legal capacity and competency to contract. In addition, a representative of a corporation, partnership or organization must have the authority to bind the corporation, partnership or organization.

## Lease Contracts

**Should the lease be registered?**

Whether the lease should be registered depends on:

**1. The Term:**

If the lease term exceeds three years, the lease should be registered in order for it to be effective at law - this ensures that the tenant can take proceedings for possession at law and that the landlord can sue for unpaid rent at law.

If the commencement date of the lease is a long way off, the lease should be registered to protect the tenancy.

**2. The Option:**

When the term plus the option exceeds three years, the lease should also be registered in order to protect the option.

If a second option exists the lease should be registered in order to protect this second option.

**3. The Commencement Date:**

If the commencement date of the lease is a long way off, the lease should be registered to protect the tenancy.

What protection do you get if you register your lease?

Registering your lease will ensure that both the landlord and the tenant are protected. Registering your lease ensures that the tenant achieves indefeasibility of title which enables the tenant to defeat any other claims over the property and defeats any subsequent registration. Registering the lease will ensure that the obligations outlined in the agreement will be complied with by both parties and are afforded the maximum protection of the law.