



A few years ago, I had purchased a plot in the name of my partnership firm. Only my wife and I are partners of this firm. The plot is the only asset owned by our firm. Can I make a will of this particular property in my wife's favour?

only a record of a past settlement would depend on the nature of clauses.

The owner of a property that I have taken on rent wants me to file property tax for it. Is filing property tax the responsibility of the owner or the tenant?

Ownership of an immovable property comes attached with the owner's responsibility to make payment of certain dues with respect to the property owned, such as property tax. It is the owner's responsibility to make complete payment of his property tax on time. However, in case the lease deed executed between you and the lessor contains a term that the property tax is to be paid by you for the duration of the lease, then it will be your responsibility to make timely payment of property tax.

Last year, I entered into a lease for five years, with a lock-in period of three years. However, the lease deed was not registered by the lessor despite my requests to him to accompany me to the sub-registrar's office. Due to other disputes among us, I wish to vacate the property soon. Can I vacate the property?

A lease of one year or longer duration, such as in your case, is required to be compulsorily registered. If not duly stamped and registered, such a lease will amount to month-to-month tenancy. Currently, yours is a case of month-to-month tenancy, where both parties have the right to terminate such an arrangement any time.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisation is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com or ht@zeus.firm.in

Yes, you may make a will of your share in the partnership firm (ie, 50%) in favour of your wife.

- Vinod Mehta

My siblings and I have recently executed a memorandum of family settlement for distribution of an immovable property that was jointly inherited by us from our mother. What are the stamp duty implications on this document?

- Abhishek Gupta

If the memorandum of family settlement in question merely records an oral settlement already arrived at between the family members in the past, then no stamp duty shall be payable on such an instrument. However, if the instrument is deemed to be effecting a settlement between the siblings, then stamp duty shall be accordingly payable under the relevant state stamp act.

My parents, siblings and I had all entered into a family arrangement in 2001. We amicably resolved all our disputes and arrived at a settlement regarding the distribution of various properties held by our family members. After a few years, we decided to put down our understanding in writing for the purpose of keeping it as a record. Is the document valid?

- LK Grover

In case the document in question merely serves to record the family settlement which was previously arrived at between the parties and does not create any fresh rights and obligations of the parties, then such a document will not require to be registered, and is valid even if unregistered. However, whether the document is a settlement which would require registration or is

treated independently. Hence, the two documents would be chargeable to stamp duty independently. To avoid litigation and uncertainty over rights and entitlements of the parties over leased premises, it is important for them to be aware of the different stamp duty implications in such lease transactions.

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THINKSTOCK

What is an extension of a lease deed?

The extension clause in a lease deed is generally made, subject to an increase in rent and security deposit by a specified amount

Sunil Tyagi
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htestates LEGAL REMEDIES

In our previous column, we dealt with the consequences and implications of having a renewal clause in a lease deed for an immovable property. Renewal of lease postulates the existence of a prior lease. In all other respects, a renewal of a lease is actually a fresh grant of lease by the lessor in favour of the lessee. This column highlights the implications of having an extension clause in a lease deed. In ordinary parlance, 'to extend' means to lengthen or prolong. Before proceeding further, let's illustrate an extension clause as is commonly incorporated in lease deeds.

Lessor X executed a lease deed for an initial lease term of five years. It had an extension clause stating that upon expiry of the initial lease term, lessee Y would be entitled to opt for an extension of lease for an additional period of five years, on the same terms and conditions as set out in the original lease deed. Such extension clauses are generally made subject to increase in rent

and security deposit by a specified amount.

The chief distinction between an extension of lease and renewal of lease is that, in order to give effect to the renewal clause under the original lease, a lease deed has to be executed once again by the parties evidencing the renewal of lease. In Provsah Chandra Dulai v Bishwanath Banerjee (1989) case, the apex court elaborated that a lease deed need not necessarily be executed afresh by the parties for giving effect to an extension of the lease. Rather, the original lease deed continues in force during the additional period.

Under the Transfer of Property Act (TPA), one of the grounds for termination of a lease is by efflux of time. While a lease deed contains an extension clause, the lease period does not terminate at the end of the initial period, in case the lessee validly exercises the option of

extending the lease period. The lessee's exercise of this option of extension of lease would not hinge on obtaining fresh assent of the lessor.

Ordinarily, the lessor is not in a position to challenge extension of lease, if it is sought to be done at the will and desire of the lessee. That is, a lessor is not entitled to unreasonably deny the lessee the right to occupy and enjoy the leased premises for the extended lease period. Courts have stated that in such cases, the lessor must be treated as having given the property on lease for the total period contemplated under the lease deed.

Thus, when a lease deed contains an extension clause, the lease does not terminate upon expiry of the initial term, in case the option to extend the lease is duly exercised in accordance with the terms and conditions of the original lease deed.

One must also bear in mind the implications of non-payment of applicable stamp duty on an extension of lease. Let's take the example of lessor X and lessee Y who executed a lease deed for an initial term of nine years, con-

taining a clause which gave the lessee an option to extend the lease for a further lease term of nine years. The parties had paid the stamp duty calculated on the basis of the initial lease term. To give effect to the extension clause in the example above, stamp duty was required to be calculated and paid in the first instance, on the basis of the total lease term of 18 years.

This brings us to another important difference between an extension and renewal of lease. As a renewal is a fresh lease in itself which is independent of the previous lease, the earlier period cannot be clubbed together with the renewed lease period for the purpose of levying stamp duty. The lease deed for the initial term and the fresh lease deed for the renewed term are to be

payment of stamp duty calculated on the basis of the initial lease term. To give effect to the extension clause in the example above, stamp duty was required to be calculated and paid in the first instance, on the basis of the total lease term of 18 years.

Recently, in the Punjab National Bank v Vijender Kumar & Another (2013) case, the Delhi High Court had held that parties cannot rely on such extension clauses for avoiding payment of applicable stamp duty for the total lease term contemplated under the original lease deed, simply by making

tax benefits. Since your wife is servicing the loan, you cannot claim the tax benefits in respect of this home loan. The tax benefits on home loan can be claimed only in your share of the home loan and not in the ratio of your ownership of the home.

In case you wish to claim the tax benefits in the ratio of 50%, you can pay 50% of the EMI to your wife and also execute a MoU mentioning all the facts about the property ownership and servicing of the loan. In case you decide to let out the property, you will be able to claim full interest against your rental income.

Harsh Roongta is CEO, Apna Paisa. He can be reached at ceo@apnapaisa.com

htestates CHEQUE BOOK Harsh Roongta

I have availed a housing loan (dual rate with a monthly rent) for ₹45 lakh for a period of 15 years. The interest rate history so far has been as follows:
April 2010 - March 2012 - 8.75%
On expiry of two years, (teaser loan) the interest rate was hiked to floating rates as follows:
April 2012 - Sep 2013 - 11.65%
Oct 2013 - Dec 2013 - 11.90
Jan 2014 - Present - 12%
In January 2013, I had an option to switch over from a retail prime lending rate (RPLR) of 4.75% to 6% on payment of ₹11,553. But I did not exercise it. Now the term for

the loan, which was initially 180 installments, has increased to 226 installments (balance term). On payment of the one-time fee of ₹1,397, the balance term will be reduced to 170 installments. How do I rectify the situation and prevent such heavy losses?

If your loan is availed from the bank, you should ask your bank to get your loan migrated from the PLR system to the base rate system, at no additional cost. Once that is done, you will be automatically shifted to the base rate regime, where the rate

of interest will be better linked with the current interest rates.

Yes, you have been paying an exorbitantly higher rate of interest (when the average rate of interest was around 10.50%-10.75%) for the last couple of years after the end of your teaser rate period. The current (January 2014) competitive rate in the market for a loan amount of ₹40 lakh to ₹45 lakh is around 10.25%. So, you should immediately exercise the option of switching your loan to a lower rate of interest, ie, 10.25% if your current lender is offering you to do the same at a small fee of ₹11,397.

You will quickly gain back this amount in a few months and then enjoy the benefit of lower rates for the balance ten-

ure of the loan.

If your current lender is not willing to reduce the rate of interest to 10.25% pa, you can evaluate the option of switching your loan to another lender.

Since the RBI and NHB have already instructed banks and housing finance companies not to charge the foreclosure fee in respect of floating loans, you will not have to pay any penalty for shifting such loans. In fact, most lenders will agree to take over your loan without any significant processing fees.

You will need a good track record of payment of EMIs to be able to get an offer from another lender to take over your existing loan.

My wife and I are salaried employ-

ees. We recently purchased a house in Mumbai. My wife is the main applicant and I am a co-applicant. The EMI is paid from my wife's account (single holding account), and she will be claiming income tax deduction on account of interest and principal. Can I also claim deduction on account of interest and principal (ratio 50:50)? I already own a flat in my name and I am claiming deduction on interest and principal payment. If I rent out this flat, can I show the rental income as my income from housing?

In order to claim tax benefits on home loans, you should either be an owner or a joint owner of the property. While owning the property, you should also be servicing the loan so as to entitle you to the

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