

Is a relative refusing to vacate your apartment?

Properties let out to relatives are referred to as permissive possession and are governed by the law of licence

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Family ties are important. When property owners permit family members and relatives to live in their properties, such permissive possession is governed by the law of licence.

For example, if an owner allows his cousin to stay in his apartment without an agreement or arrangement for lease, it will be considered permissive possession and their relationship will be that of a licensor and licensee. The actual possession will remain with the owner/licensor of property.

When the owner wants his property back and asks the relative (licensee) to vacate the premises, he can send a notice in writing for termination of license. What happens, however, if the licensee fails or refuses to vacate the property? What is the way out for the owner?

The concept of licence is defined under the Indian Easements Act, 1882. A licence is a personal right granted by one person to another to do something on an immovable property of the grantor without

ALL ABOUT THE LAW OF LICENCE

- Permissive possession given to family members, loved ones, relatives is governed by the law of licence
- The concept of licence is defined under the Indian Easements Act, 1882. A licence is a personal right granted by one person to another to do something on an immovable property of the grantor without creating any interest in respect of the possession or title of the property
- In a licence, the possession of the property remains with the owner but the licensee is merely permitted to use or stay in the premises for a particular purpose
- No interest in the property is created in favour of the licensee and the licensee can use the property only in the manner which is permitted by the licensor
- If the property owner wants his property back, he may direct the relative (licensee) to vacate the premises. For termination of licence, a notice may be sent in writing by the owner
- If the licensee fails to vacate the premises despite a termination notice, the licensor may file a suit of injunction before the court of law seeking relief

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Thus, where the person has restricted or limited right to use the property while it remains in possession and control of the owner, such a transaction is called a licence.

Secondly, termination of licence is necessary to get the licensee to vacate the property for which a notice has to be issued to the person concerned. Should he not vacate, the licen-

sor can file a suit of injunction before the court seeking relief from the court to direct the licensee to vacate the premises.

However, it must be noted that the licensor must act promptly in such a situation. On verifying the facts and circumstances, the court can pass an injunction order and direct the licensee to vacate the premises.

In a suit for injunction, ie for directing the licensee to vacate the premises, a licensor has to pay a minimal amount as court fee. In a suit for recovery of possession, court fee is payable on the market value of property. Where a licensor acts promptly, a suit for injunction to remove the licensee from the premises is entertained by the court. Delay in doing so could result in the court not entertaining a suit for injunction. Subsequently, the licensor would have to file a suit for recovery of possession on which the licensee has to pay a higher court fee.

Another right that the licensor has against the licensee for illegally occupying the property is that of mesne profit. Mesne profits refer to the gains that an illegal possessor may have derived by using such a property



despite termination of licence. This may be granted by the court of law only if it has been claimed for by the licensor. Therefore, if one is claiming possession of property in the appropriate court of law, one must ask for mesne profits along with possession of the property.

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