

Registration of lease agreements

To extend a 11-month lease deed, further term payment of stamp duty is required for the total lease term under the original lease



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Sunil Tyagi
htestates@hindustantimes.com

A lease is the grant of right to the exclusive possession of an immovable property for a specific term, for a certain amount. When a tenant takes an immovable property on lease, he gets the right to enjoy the property for a specified time and is required to pay a monthly, quarterly or annual lease rent for the property. To record such an understanding or agreement, two parties – the landlord and tenant execute a lease deed which records the terms and conditions of lease and captures specifics like the duration of the lease, method of renewal of lease and grounds of termination of lease etc.

A lease agreement which transfers the right to enjoy the immovable property for a certain period of time is an instrument attracting stamp duty under the Indian Stamp Act,

1899. Proper stamp duty chargeable on the lease deed for leases of immovable property of different time duration is prescribed under the Stamp Act. However, the provisions regarding the registration of lease deed are under the Registration Act, 1908, and also in the Transfer of Property Act, 1882. Under the Registration Act, it has been provided that it is optional to register a lease deed for immovable property for any term not exceeding one year. The Transfer of Property Act also makes it mandatory for the registration of lease deed for immovable property for a term exceeding one year.

In view of the above-mentioned provisions, most people execute the lease deeds on a ₹100 stamp paper for a period of 11 months as it is not compulsorily required to be registered.

There have, however, been cases wherein an 11-month lease agreement, an in-built escalation clause for automatic extension of term for a period of say three to five years was incorporated to evade payment of stamp duty and registration of the lease agreement.

In such a case that came up for consideration in a court of

law, the lease agreement was treated as a lease deed for the entire period commencing from the initial term of 11 months till the expiry of the extended term in view of the fact that the possession of the lessee continued even after the 11 months. In such a case, deficiency in stamp duty was levied for the extended term along with penalties and interest.

In order to evade stamp duty and registration of lease deed, in some cases, a lease agreement

for a month to month tenancy was entered into under a written contract with an automatic extension unless terminated. Various high courts in this regard on various occasions have held that though a lease agreement may be of monthly tenancy it does not follow that it is a lease for less than a year. It may be determined to be a lease for an indefinite period. It is pertinent to mention here that lease for indeterminable term is to be charged with stamp

duty which usually in most of the states is equivalent to the stamp duty chargeable on a conveyance deed.

To sum up, we can say that primarily stamp duty is payable on a lease of immovable property of less than one year term although registration of the same is optional.

However, in case of automatic extension of such original lease for a further term(s) payment of applicable stamp duty is required for the total lease term

as contemplated under the original lease deed and not just on the basis of initial lease term of less than one year. Such a lease deed will also require compulsory registration.

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



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The tenant of my property is overstaying despite the fact that the lease term had expired some weeks ago. I have given him numerous notices, asking him to vacate, but to no avail. Should I forcibly evict him?

– Jitesh Rathore

Despite the fact that your tenant has not vacated the property even after expiration of the lease term and the notice period, you cannot forcibly evict the tenant. Nevertheless, you are entitled to seek eviction of the tenant by filing an eviction suit, if the tenancy is not covered under Delhi Rent Control Act, 1958, in the competent civil court.

of the mortgage deed the possession of the house was transferred to the lender till the repayment of the loan amount. Now I have repaid the entire loan amount to the lender, but the lender has not yet returned the possession of my property to me. It has been almost two years. Am I still entitled to file a suit for the possession of the property?

– Jayant Rikhi

As per the Limitation Act, 1963, you are entitled to file a suit for redemption that is a suit for recovery of possession, within three years from the date you have repaid the loan amount to the lender.

I had entered into an agreement to sell to purchase a flat last year. As per the terms of the agreement, it was agreed that the sale deed would be executed within one year from the date of the agreement. More than a year has gone by and the owner has been delaying the execution of sale deed on one ground or the other. Can I file a suit for specific performance even though our agreement is silent on this aspect?

– ML Malik

Even though the agreement to sell in your favour does not contain an explicit clause on your right to sue for specific performance, you are nevertheless entitled in law to seek the relief of specific performance and to get the sale deed executed in your favour.

I had taken a loan by mortgaging my house to the lender in October 2014. As per the terms

I have booked an apartment in an under constructed group housing project in Gurgaon along with my son who is 21 years old. Now I wish to make my wife the co-owner in place of my son. Can this be done?

– Sangit Shah

The substitution of your wife in place of son depends on the allotment terms/buyer agreement and also that your son has no objection to such substitution. If substitution or transfer is permissible under allotment/booking terms, you may apply to the developer to make any person as the new co-owner.

The author is a senior partner, ZEUS Law Associates, 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.

