

Terms and conditions apply

A lessor and lessee's responsibilities have to be clearly defined in a lease deed, factoring in payment of property-related dues, repair work

Sunil Tyagi
hlestates@hindustantimes.com

htestates LEGAL REMEDIES

The previous column discussed various clauses that parties must include in the lease deed at the very outset to make their rights enforceable. This column captures other aspects that the parties must take into consideration when negotiating the terms of the lease deed.

Rights and duties of lessor: A lessor has the right to restrain the lessee from using the property in an unlawful manner or in a manner which violates the conditions laid down in the lease deed. In the event of the lessor deliberately suppressing vital information about the property before execution of the lease deed, the lessee may either claim damages, or rescind the lease contract, or enforce specific performance of the contract. Before entering into a lease, it is the legal duty of the lessor to disclose material defects, if any, in the title of ownership of the property. At the time of execution of lease, the lessor should hand over peaceful, physical possession of the property to the lessee. During the entire term of lease, the lessor is not entitled to obstruct, hinder or unduly

interfere with the lessee's quiet and peaceful possession and enjoyment of the premises, provided the lessee is not in breach of terms of the lease deed. It is the lessor's duty to make timely and full payment of charges attached to the land/property (ie house tax) unless otherwise specified in the lease deed. These basic covenants are implied in nature—that is, they apply in the absence of a contract to the contrary between the parties.

Rights and duties of lessee: Upon termination of the lease, a lessee may remove all fixtures/fittings installed by him in the property. In force majeure conditions, if any material part of the property is wholly destroyed or rendered permanently unfit for occupation, the lessee has the option to terminate the lease. A lessee is required to pay rent on time and in the proper manner as specified in the lease deed. He is also obligated to maintain the property in a good, habitable condition throughout his term of occupation. A lessee should

not use (or allow any other person to use) the property for purposes other than what it was originally leased for, without obtaining the lessor's consent. A lessee cannot construct any permanent structure in the property, without first obtaining the lessor's consent. Also, a lessee cannot deny the lessor entry to the property at all reasonable times for the purpose of inspection.

Upon expiry or termination of the lease, as the case may be, the lessee must hand over peaceful, physical possession of the property, in the state in which he and she had first received the property, except for reasonable wear and tear. These basic covenants are also implied in nature.

Termination: The parties should clearly enumerate the conditions of breach leading to earlier termination of the lease.

Some instances of breaches by a lessee include delayed payment or non-payment of rent and utility bills, use of premises in a manner which violates the permissible usage, damaging the premises, etc. Instances of breaches by a lessor include interference with the lessee's peaceful enjoyment of the premises, and failure to

repair/rectify major structural damage, etc.

Stamp duty and registration: If the parties want to share the burden of paying stamp duty, they must specify so in the lease deed. Unless otherwise specified in the lease deed, it is the lessee's responsibility to pay stamp duty on the lease deed. If a lease entry to the property at all reasonably stamped and/or registered, it would amount to being a month-to-month lease.

Under the Registration Act, 1908, lease documents for month-to-month tenancy not exceeding 11 months do not require compulsory registration. However, lease of a property from year to year, or for a term exceeding one year, or reserving yearly rent, requires compulsory registration.

Crystallising these terms while setting out the parties' rights, obligations and entitlements in the lease deed shall go a long way in minimising landlord-tenant litigation.

The author is 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 hlestates@hindustantimes.com or ht@zeus.firm.in



THINKSTOCK



I recently became aware that my tenant has sub-let my property to a third party, without taking my consent. Can he do so?
 —Anand Sharma

From the facts provided, it is not clear whether or not the lease deed contains a clause prohibiting the lessee from further sub-letting the property during the lease term.

In case there is no express stipulation in the lease deed which prohibits the lessee from further sub-letting the property, the lessee is entitled to sub-let the premises.

In his will, my deceased father had bequeathed entire ownership of a vacant plot in favour of my minor son. We are now keen to sell the plot and invest the sale proceeds in a new property. Can we do so? If so, how should we proceed?
 —Vijay Ahuja

As your minor son is currently the absolute and sole owner of this property, it can only be transferred after you (as natural guardian) obtain prior permission from courts to do so.

Depending on the facts and circumstances of the case, the court may permit transfer of the property on conditions as the court may deem fit, or may not permit such transfer if it may endanger the welfare and

interests of the minor.

I had given my commercial property on lease for a total term of nine years. Even though the initial two years of the lease term was mutually agreed as a lock-in period in the lease deed, the tenant recently served me with a notice for terminating the lease, on the premise that the lease deed is an unregistered document. As only one year of the lease has expired, what recourse can I take against the tenant?
 —Karan Katyal

As the lease deed in question has not been duly registered, the tenancy that was created is a month-to-month tenancy, wherein either party may terminate the lease at any time with prior notice, irrespective of lease term and lock-in period provisions agreed to in the lease deed.

Hence, subject to other facts and circumstances, your lessee may be entitled to terminate the lease during the lock-in period.

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 hlestates@hindustantimes.com or ht@zeus.firm.in



I want to buy a house in Canada for my son who is studying there. Can I buy an apartment for him by selling property in India? How much should I ideally spend for this purpose?
 —Manju

Yes, you can certainly buy a house in Canada as RBI allows Indian residents u/s Section 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) to send up to \$1,25,000 per year for any purpose, including buying any

immovable property outside India. However, since you want to do this by selling your existing property in India, you will not be able to claim capital gains exemption under Section 54, in case the existing property being sold is a residential house; or under Section 54 F (in case the property to be sold in India is other than a residential house).

The Finance Act 2014 has amended these provisions and has specifically provided

that the capital gains exemption under Section 54 or 54F cannot be claimed in case the residential house property to be acquired is situated outside India. You can save tax by buying any other residential property in India or by investing the capital gains in capital gains bonds of up to ₹50 lakh in a year.

My brother has taken a bank loan for a property. He wants to gift a part of it to me. Can he do it?
 —Rajiv Bhatt

Your brother can certainly sell or gift part of the property to your name. Any change in ownership can only be done with the consent of the lender. The lender may require him to

pay off the loan first or you may be required to become a co-borrower for the loan. It will also entail stamp duty and registration expenses. Various states have lower stamp duty rates for gifts made to relatives and you can take advantage of the relaxation of charges, if applicable to you.

Can I take a joint loan with my sister? By taking it jointly, our loan eligibility will increase.
 —Ankur Dutta

It is very unlikely that the lender will allow your sister to join you as co-borrower for the loan. Normally lenders allow immediate kin like spouse, parents, son as co-borrowers to the loan and a

few lenders even allow brothers as co-borrowers. Most banks will provide a loan to brothers on a case-to-case basis, but it might be more difficult for a combination of brother and sister. If you can convince the bank that the income of the borrowers will constitute a single economic unit and is likely to remain so in the foreseeable future, they may agree.

I have been working for the last five years and my monthly income is ₹25,000. I want to purchase a property costing ₹30 lakh. What is the loan amount I'm eligible for?
 —Abhishek Singhal

Banks can grant loan up to a maximum of 80% of the agreement value of the

property as a home loan. The overall eligibility will be based on your income, your regular outgoings and repayment track record. If you are below 40 years of age, banks will normally lend up to four or 4.5 times your gross annual income. You should be eligible for an approximate loan amount around ₹12 lakh at 10.15% - 10.25% pa for a tenure of 20 years provided you have no other loans to service. Hence, your down payment will considerably go up. You can, however, add your earning spouse/parents as a co-borrower.

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



THINKSTOCK