

Understand the difference

Documents for transfer of immoveable property should be clearly defined as 'lease' or 'license' deeds to avoid confusion in a dispute

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Parties execute lease deeds and license deeds to undertake any action pertaining to transfer of immoveable property. The general belief is that the nature of the document is determined by what the document is called. In a number of situations, a landlord transferring his property on rent under a lease titles the document (executed for the purpose) as 'license deed'. He is obviously under the misconception that (because the document is titled license deed) he can forcibly evict the tenant any time. It is, therefore, essential to understand the difference between license and lease. The concept of license has been defined under the Indian Easements Act, 1882. A license is a personal right granted by one person to another to do something upon immoveable property of the grantor and

does not create any interest in the property itself. A lease is defined under the Transfer of Property Act, 1882. Though there is a marked distinction between a lease and a license, identifying whether a transaction is a lease or license of a specific property may not always be clear.

One of the main differences between license and lease is that in case of a license, the possession of the property remains with the owner but the licensee is permitted to use the premises for a particular purpose. No interest is created in favour of the licensee and he or she can use the property only in the manner as permitted by the grantor. In the lease of an immoveable property the lessee is entitled to be entrusted the possession of property and is entitled to the

enjoyment of the property to the exclusion of the lessor. Thus, a lease is a transfer of an interest in the immoveable property. If in a transaction, the person has only a restricted or limited right to use the property, while the property remains in possession and control of the owner, such a transaction is considered to be a license.

A lease is a transfer of right to enjoy such property, in consideration of a price, ie the rent, whereas in a license, the grantor gets a license fee as consideration. When the grantor sells his property in which he has a license, the purchaser may not be bound by such license unless explicitly agreed. However, when the lessor transfers the leased property, the buyer of the property will be responsible to undertake all the liabilities of the lessor.

The courts in certain cases have decided whether the transaction was a lease or a license based on different factors --



largely subject to the facts and circumstances of each individual case. For instance, where the lessee had been granted the right to exclusive possession of the property, the instrument in question was held to be a lease deed by the courts. On the other hand, where the defendant was given exclusive possession of the disputed premises for a particular purpose but was not given the permission to sub-lease the property, the transaction was held to be a license. In some cases, where the keys of the premises were taken by the grantor in the morning and returned in the evening, the court has held

the transaction to be a license.

Thus, the title of the document is not conclusive enough to determine whether a transaction is a lease or a license. In order to avoid disputes, it is for the parties to clearly set out their intention whether it's a lease or a license in their documentation. For avoiding any dispute, the factors that should be kept in mind while drafting the lease deed or the license deed include, the terms with respect to rent/license fee, which party is entitled to possession of the property, the terms of usage of the property, etc. Courts have, time and again, held that for ascertaining the

nature of the document it is necessary to look into the real intention of the parties, ie whether they intended to create a lease or a licence. Courts take into account the language of the document and the facts and circumstances, irrespective of the name of the document executed by the parties.

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