

Key Points for Drafting a Lease Agreement

The guidelines given below on the key points which should be included while drafting a lease deed from a lessor's and lessee's perspective when leasing out residential property are merely indicative. The terms may vary from case to case depending on the commercial arrangement, the agreement between the parties and the local laws that may apply.

A. Key Points for the Lessor.

- **Property Description** – The exact description and location of the premises being leased should be mentioned, along with the number of parking spaces if any. A list of fixtures and fittings provided in the premises should be mentioned too.
- **Term** - The term of the lease along with the commencement and the expiry date should be mentioned.
- **Lock-in Period** – Lock-in period i.e. the period/ term before which the lessee and, or, the lessor cannot terminate the lease, may be mentioned. Mentioning the lock-in period would help the lessor (a) to avoid abrupt termination of the lease by the lessee, (b) to secure the rental payments for at least the lock-in period, and (c) to avoid frequent payment of brokerage fee to get a new tenant. However, the lessor should be able to terminate the lease during the lock-in period in exceptional circumstances or when the lessee defaults on the payment, wherein the lock-in will not apply.
- **Renewal** – Renewal of the lease after the expiry of the term, if commercially agreed, should be mentioned. Further, if the lease can be extended through an extension letter (according to existing terms and conditions) or if the lease will be renewed by a fresh lease agreement on revised terms and conditions, this should be mentioned. Notice period within which the lessee should intimate its intention to renew the lease should also be mentioned.
- **Termination** – Grounds for termination of lease like non-payment of rent, breach of agreement, damage to property, force majeure, etc. along with the right to terminate at will should be specified in the agreement. Further, the notice period for termination should also be specified.
- **Rental Payment** - The amount of rent, due dates of payments, mode of payment, rate of interest for delay in rent payment, percentage and frequency of rent escalation, should be specifically provided for.
- **Taxes** – It should be specified whether the rent amount is inclusive/ exclusive of any applicable taxes. Further, the nature of taxes to be borne by the lessor should be clarified.
- **Security Deposit** – The amount of security deposit and terms for payment of the same should be mentioned. The refund and the deductions that could be made from the security deposit in case of loss/ damage to the premises, failure to pay for any utilities, etc. while refunding the security deposit, should also be mentioned.
- **Maintenance Charges** – The agreement should be clear on whether it the lessor's or the lessee's obligation to pay the maintenance charges, society charges, and similar costs.
- **Utility Charges** – The agreement should be clear on whose obligation it is to pay utility charges like electricity, water, gas, telephone etc. to the relevant authorities, which is generally the obligation of the lessee.
- **Permissible Use** – Permissible usage of the premises should be specified.
- **Repairs** – The lease deed should also be clear on whose obligation it is to undertake minor repairs to the premises and for keeping the property in good condition, which is generally the

obligation of the lessee.

- **Alterations** – The lessee should not carry out any structural additions or alterations in the premises/ building layout, fittings or fixtures without the prior written consent of the lessor.
- **Inspection** – Lessor should have the right to enter the premises at any reasonable hour of the day to inspect the premises and to carry out the necessary repairs.
- **Sub-letting** – The lease deed should be clear as to whether or not the lessee is permitted to sub-let the leased premises to a third party and whether it will be subject to approval of the lessor.
- **Transfer/ Assignment** – Agreement should also specify whether the lessee is permitted to transfer/ assign the lease agreement to a third party, and the circumstances in which this is permitted.
- **Indemnities** – The lessor should typically obtain *inter alia* the following indemnities from the lessee:
 - Damage/ loss to the property because of lessee's fault;
 - Any breach of the terms of the agreement by the lessee; and
 - Wrongful/ illegal use of the leased premises.
- **Registration** – The lessor should check the local laws applicable on whether the registration of the lease deed is mandatory. For e.g. in certain states, lease/ leave and license for a term of less than 11 (eleven) months, is to be mandatorily registered with the relevant land/ revenue authorities for it to be admissible as evidence.
- **Stamp Duty** – Appropriate stamp duty should be paid on the lease deed in accordance with the state specific laws. Also, the lease deed should specify whose obligation it will be to pay the stamp duty and the registration fees.
- **Verification** – The lease deed should also specify that the lessee shall provide and furnish the documents as may be required for the purposes of verification as per local law requirements such as a photocopy of passport, pan card, voter id card etc. to the lessor.
- **Handover of Possession** – When the lease term expires, the handover of possession should be documented, and the key should be handed over in the presence of a witness to prevent any dispute later.
- **Jurisdiction** – The leased deed should clarify which court will have jurisdiction in case of any dispute arising between the lessor and lessee.
- **Dispute resolution** – The mechanism for resolution of disputes should also be mentioned whether it will be through arbitration or through a court process.

B. Key Points for the Lessee.

- **Property description** – The exact description and location of the premises being leased along with the number of parking spaces, if any, should be mentioned. Further, a list of all the fixtures and fittings being provided in the premises should be mentioned.
- **Term** - The term of the lease along with the commencement and the expiry date should be mentioned.
- **Lock-in period** – Lock-in period i.e. the period/ term before which the lessee and, or, the lessor cannot terminate the lease, may be mentioned. It would prevent the lessee from an early and abrupt eviction from the premises and avoid frequent payments of brokerage fee to get premises on lease. However, the lessee should be able to terminate the lease during the

- lock-in period in exceptional circumstances or for default of the lessor, wherein the lock-in will not apply.
- **Renewal** – Renewal of the lease after the expiry of the Term, if commercially agreed, should be mentioned. Further, if the lease can be extended by way of an extension letter (on existing terms and conditions) or if the lease will be renewed by a fresh lease agreement on revised terms and conditions, should be mentioned. Notice period within which the lessee should intimate its intention to renew the lease should also be mentioned.
- **Termination** – Grounds for termination like breach of agreement, etc. along with the right to terminate at will after the lock-in period, should be specified in the agreement. Further, the notice period for termination should also be specified. The lessee may also ensure that a reasonable period is provided to the lessee to cure a default, if any.
- **Rental Payment** - The amount of rent, due dates of payments and grace period (if any) should be mentioned.
- **Taxes** – Rent amount whether is inclusive/ exclusive of any applicable taxes should be specified. Further, the nature of taxes to be borne by the lessee should be clear. For e.g., property taxes are generally borne by lessor.
- **Security Deposit** – The amount of security deposit should be mentioned and same amount should be refundable when the lease expires, simultaneously with the premises being handed over. The deductions from the security deposit should be limited to any major damage to the premises or for failing to pay for any utilities, etc, and should not be for any regular wear and tear to the property.
- **Repairs** – The Lessor should be responsible for all major repairs to the premises required or should reimburse the costs incurred by the lessee in respect of these repairs.
- **Maintenance Charges** – The agreement should be clear on whose obligation it is to pay any maintenance, society charges, or other similar charges, whether it is of the lessor or the lessee.
- **Utility Charges** – The agreement should be clear on whose obligation it is to pay any utility charges like electricity, water, gas, telephone etc. to the relevant authorities.
- **Alterations** – The Lessee should have the right to carry out minor repairs or other maintenance jobs on the leased premises at its own expense.
- **Registration** – The lessor should check the local applicable laws on whether the lease deed is required to be compulsorily registered. For e.g. in certain states lease/ leave and license for a term of less than 11 (eleven) months, is to be mandatorily registered with the relevant land/ revenue authorities, for it to be admissible as evidence.
- **Stamp Duty** – Appropriate stamp duty should be paid on the lease deed in accordance with the state specific laws. Also, the lease deed should specify whose obligation it will be to pay the stamp duty and the registration fees.
- **Title Verification** – The Lessee should conduct title search on the property to ensure that there are no mortgage or other claim on the premises which can lead to early termination or eviction of the lessee from the premises. The lessee should also obtain all appropriate representations and warranties from the lessor with respect to the clear title of the lessor to the premises without any encumbrances and with respect to the legal capacity of the lessor to lease the property.
- **Ownership** – Lessee should obtain adequate representations and warranties from the lessor that he is the legal owner of the property.

- **Insurance** – The obligation to obtain an insurance policy to safeguard the premises against fire, earthquake, etc. should be of the Lessor.
- **Force Majeure** – The lessee should not be responsible if the leased premises are destroyed or damaged by an act of god to be unfit for occupation and use by the lessee. Rent payment should accordingly be suspended.
- **Indemnities** – The lessee should typically obtain the following indemnities from the lessor:
 - Quiet and peaceful possession and use of the leased premises;
 - Any defect in title of the leased premises or any third party claims relating to the title of the said property; or
 - Any non-fulfilment of obligations or breach of any of the representations and warranties made by the lessor.
- **Jurisdiction** – The leased deed should be clear as to which court will have jurisdiction in case of any dispute arising between the lessor and lessee.
- **Dispute resolution** – The mechanism for resolution of disputes should also be mentioned whether it will be by way of arbitration or through a court process.

DISCLAIMER:

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