



ISSUES RELATING TO COMMERCIAL LEASING

BAHAMAS

McKinney, Bancroft & Hughes

CONTACT INFORMATION

Lourey Smith

McKinney, Bancroft & Hughes

Mareva House,

4 George Street,

P.O. Box N-3937

Nassau, Bahamas

242.322.4195

lsmith@mckinney.com.bs

www.mckinney.com.bs

1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

Stamp duty is payable on the creation or assignment of a lease. Stamp duty is on an ad valorem basis and is calculated upon the value of the lease or consideration thereof, whichever is the greater. Stamp duty is calculated on every lease:

- (a) for a term not exceeding 7 years - 1% of the annual rent reserved;
- (b) for a term exceeding 7 years but less than 10 years - 2% of the annual rent reserved; and

Leases for 10 years or more or every transfer of a Crown lease shall be liable to stamp duty based upon the value of the lease or the consideration for the creation or transfer, whichever is the greater, as follows:

- (a) does not exceed \$20,000 - two per cent of the value;
- (b) exceeds \$20,000 and does not exceed \$50,000 - four per cent of the value;
- (c) exceeds \$50,000 and does not exceed \$100,000 - six per cent of the value;



(d) exceeds \$100,000 and does not exceed \$250,000 - eight per cent of the value

(e) exceeds \$250,000 - ten per cent of the value

When assessing stamp duty renewal terms are calculated together with the term of the lease.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

There are no restrictions limiting the maximum term of a lease.

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

Subject to the agreed terms of the lease there are no laws requiring landlords to allow a tenant to renew its lease.

4. Describe any restrictions on rent that may be charged for to a tenant.

There are no restrictions on rent for commercial leases.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

There are no laws specifically permitting tenants to terminate a lease prior to its stated expiration date.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

The tenant has a right, in principle, to assign or sublease his lease unless a contrary intention is expressed in the lease. Leases commonly make provision for assignment of subleasing only with the landlords consent. An assignment or sublease created without consent or in breach of the lease is still however valid and shall remain valid subject to and until the landlord exercises his right to terminate the lease.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

A landlord may restrict assignments and subleases by a tenant within the provisions of the lease on normal freedom of contract principles.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

A demand notice to vacate in a reasonable time period must first be issued to the tenant. If the tenant has not vacated the premises within the allotted time period a notice of eviction may be filed with the magistrates court and notice properly served upon the tenant. The magistrates court, on proof of service, will scheduled a hearing for the eviction. The length of time varies, however proceedings normally take an average of one month from filing the proof of service with the court.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

Subject to the provisions contained in the lease itself there are no restrictions on pledging a leasehold interest as security for financing.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

There are no requirements for a landlord to hold security deposits in separate accounts.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

There are no statutory disclosures required for a landlord to make to a tenant. The common law provides however that a landlord must disclose known defects on the premises.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

There are no taxes that a landlord is required to collect from its tenant.

13. Describe any limitations on the ability of landlords to exercise self-help.

Self-help is available for commercial leases however a right of re-entry or forfeiture under any proviso in a lease, for a breach of a covenant or condition is not enforceable unless and until the landlord serves a notice on the tenant. The notice should specify the particular breach complained of and, if the breach is capable of remedy, requiring the tenant to remedy the breach. The landlord may in any case require the tenant to pay compensation in money for the breach. If the tenant fails, within a reasonable time, to remedy the breach and/or to make reasonable compensation in money to the satisfaction of the landlord for the breach, the landlord may exercise its right of re-entry or forfeiture. Any self-help conducted must be peaceful.

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

Acceleration of the rent (or other remedies) must be expressly provided for in the lease agreement.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

Notwithstanding any remedies provided for within the lease there are no statutory expedited remedies for a tenant default.

16. Describe any formal requirements for the execution of a lease.

A lease exceeding three years must be in writing and executed by deed under seal. The deed must be signed in counterparts by both parties and witnessed.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

Generally there is no requirement to have a memorandum of lease or other document recorded to be enforceable against third parties, however stamp duty is payable prior to the lease being acceptable as evidence in court. The International Persons Landholding Act does require any lease or letting agreement that is for the purpose of trade or business and that enables the lessee or tenant to prolong the term beyond twenty-one (21) years to be registered. Such a lease or letting agreement in the absence of registration will be null and void and be without effect for all purposes of law.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

Subject to the provisions contained within the lease there are no restrictions on the transfer of the real property. The lease is enforceable against the transferee of the real property and the tenant's rights and obligations will not be affected. A bona fide purchaser for value without notice may receive the real property free of the lease, this is however rare since most tenants are in possession which shall be deemed as implied or constructive notice on the purchaser.