



ISSUES RELATING TO COMMERCIAL LEASING

BARBADOS

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

Leases attract stamp duty of 1% of the annual rental. Where the annual rent varies the average rent is used. Where the consideration is other than money the stamp duty is US\$12.50. On renewal the stamp duty is the same as though a new lease was created.

Property transfer tax of 2.5% of the value of the lease is payable on leases exceeding 24 years. The tax is payable where the term of a lease for 24 years or less expires and a new lease is granted within 2 years to the same tenant which causes the total time the tenant is in possession to exceed 24 years. This also applies in the case of the renewal of a lease which will take the term over 24 years.

The value of the lease is assessed by the Commissioner of Valuations.

A lease for more than one year must be recorded at the Land Registry at US\$2.00 per page, save in the case of land registered under the Land Registration system, where the lease must be registered and a prescribed fee, based on the value of the land but not exceeding US\$150 must be paid.

On assignment of a lease the stamp duty is 3/5 of 1% of the value of the lease and the Property Transfer Tax is assessed in the same manner as on creation of a new lease.

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

There are no restrictions on the maximum term of a lease but please see above in respect of Property Transfer Tax accruing on leases in excess of 24 years.

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

There are no laws which force a landlord to allow a tenant to renew its lease but many commercial leases have provisions which do allow for renewal if the tenant is in compliance with all of the terms of the lease. If this is the case, the landlord must honor these provisions if the tenant is so in compliance.

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

There are no restrictions on rent that may be charged.

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

There are no statutes that permit the tenant to terminate a lease prior to its stated expiration date. A tenant will have to rely on common law provisions which, in the case of the landlord's gross neglect or refusal to comply with the provisions of the lease that impose obligations on it, would allow the tenant to claim that the landlord has repudiated its contract with the tenant

Most leases do have provisions for early termination on either side however.

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

The Property Act Cap 236 contains a provision at section 158 (f) which implies a covenant on the tenant's part not to assign sublet or otherwise part with possession of the premises or part thereof without the landlord's consent. This provision can be contracted out of. Most leases do contain provisions imposing such prohibitions as well.

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

The Property Act Cap 236 s.158 (f) provided that there is an implied covenant on tenants' part not to transfer, charge, sublet or otherwise part with possession of leased premises or part thereof without the landlord's written consent. This provision can be contracted out of.

Most leases do provide for specific restrictions of some kind as well.

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

Service of a notice to quit is the first step. If the tenant does not quit the premises the landlord can service a notice of intention to apply to the court for eviction. If the tenant still does not

vacate the premises application must be made to the magistrates' court accompanied by evidence that the first two steps have been taken.

The entire process can take 3 to 6 months.

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

The Property Act Cap 236 s. 158 (f) provides that there is an implied covenant on the tenant's part not to charge the leased premises without the written consent of the landlord. This provision can be contracted out of.

Lenders are reluctant to take a leasehold interest as security for a loan in Barbados, as they are dependent on the tenant's compliance with the terms of the lease in order to avoid forfeiture by the Landlord. The Property Act section 168 contains provisions to provide relief to mortgagees on forfeiture by a landlord which will, if successful, put the mortgagee in the position of the tenant. This does not suit most mortgagees who consider this to be an insufficient remedy as what they require is a right to sell the leasehold interest in the premises without incurring for themselves any additional responsibilities (such as for payment of rent and upkeep of the premises).

Most leases do have provisions which limit the assignment or sub-lease of the term however.

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 such provisions - the tenant would have to insist they be included in its lease.

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

There are none.

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

There are no taxes that the landlord must collect from the tenant but the landlord must pay income tax on all its income - and rental income is included as part of the landlord's income.

Tenancies must be registered under the Landlord and Tenant (Registration of Tenancies) Act so that Government can keep track of their existence.

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

A landlord may not distain against:

things that are in actual use, (for example, an object in the tenant's hand at the time, so that to take it would cause a breach of the peace)

things delivered to the tenant by way of trade or business,
wearing apparel and bedding,

tools and implements of the tenant's trade,

machinery equipment or items belonging to a third party where the landlord has or receives notice of such third party ownership.

The remedy of distress is only available for recovery of unpaid rent.

Section 167 of the Property Act also provides that a Landlord may not exercise the right of forfeiture until he has served notice specifying the breach complained of, and if that breach is capable of being remedied, requiring the tenant to remedy it within a reasonable period of time, and in any case other than non-payment of rent, requiring the tenant to make monetary compensation for the breach, and the tenant has failed to comply with the notice.

Section 168 of the Property Act permits tenants, sub-lessees and mortgagees to seek relief from the court if a lease is ripe for forfeiture by a landlord.

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

The Property Act section 166 allows a landlord to forfeit a lease where the tenant is in breach of its terms by re-taking possession of the premises or court action. (Court action described previously). Re-taking possession itself has limitations under the common law and should not be attempted without legal advice and the help of the appropriate authorities including the police.

Most leases do provide other remedies for a landlord, such as penalties or interest payable.

Prior to forfeiture the landlord must serve a notice requiring the tenant to remedy the breach and, where the breach is other than the non-payment of rent, pay monetary compensation. (see 13 above).

The landlord has a common law remedy of distress which has been codified to some extent in the Landlord and Tenant Act Cap 230 which allows the landlord to enter the premises, take up certain assets belonging to the tenant, and impound and/or sell the same as compensation. This is a complex remedy and should not be executed without legal guidance and the assistance of the Chief Marshal. (see 13 above).

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.

The Property Act section 166 provides for forfeiture of a lease by a landlord re-taking possession. There is also the right of distress for recovery of unpaid rent. (See 13 and 14 above).

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

All leases of more than one year must be in writing and must be stamped and recorded or registered at the Land Registry within 3 months of execution. Where a lease exceeds 24 years Property Transfer Tax must be paid on the lease. For a new or renewed lease to be exempt from this tax it must contain a declaration that it is not one which when added to any previous term totals 25 years or more.

A lease should be by deed, executed by both parties and witnessed by attorneys-at-law or notaries public.

To be recorded an attorney-at-law must affix his ""drawn and prepared"" stamp to the lease and sign it.

A lease of land that is registered under the Registration System must conform to the prescribed form.

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

See 16 above.

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?

There are no restrictions on the transfer but the transferee would take the property subject to the existing lease.