



## ISSUES RELATING TO COMMERCIAL LEASING

### COLOMBIA

#### Brigard & Urrutia Abogados

##### CONTACT INFORMATION

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

There are no transfer taxes payable on creation or assignment of a lease agreement in Colombia.

2. Describe any legal restriction limiting the maximum term of a lease (Including renewals).

Under Colombian law there is no legal restriction limiting the maximum term of a lease (including renewals).

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

Colombian law provides a general regime applicable to lease agreements established in the Civil Code. However, there are particular regulations applicable to: (i) commercial lease agreements established in the Commercial Code ("Commercial Lease Law") and (ii) housing lease agreements determined by Law 820 of 2003 ("Housing Lease Law").

Pertaining to commercial lease agreements, by means of article 518 of the Commercial Code, the tenant shall be entitled to renew its lease contract whenever it has held the property under a lease agreement over a minimum of two consecutive years, except in the following instances:

1. Breach of the contract by the lessee.

2. When the owner needs the property for his own occupation or for the installation of a business establishment (*establecimiento de comercio*) of his own with a different activity from the one carried out by the previous lessee.
3. When the property is subject to reparations that cannot be performed without the restitution.
4. When the property has to be demolished as a consequence of its ruin status, or when a new construction over the property will be carried out by the owner.

In the events described in 3 and 4 above, the tenant shall have preference right to occupy the new premises once the construction is finished.

Pertaining to housing lease agreements, neither the Civil Code nor Law 820 of 2003 provides requirements for landlords to allow a tenant to renew its lease. Under civil and Housing Lease Law, it is up to the parties to consent on the renewals of the agreement, which may be automatic or subject to notification by the parties in accordance to the terms established in the contract.

However, by means of the Housing Lease Law the tenant may unilaterally terminate the lease at the expiration of the initial term or its extensions by sending written notice to the landlord through the authorized Postal Service with no less than three (3) months prior to the expiry date of the initial term or its renewals. In this event, the tenant is not obliged to pay damages compensation to the lessor.

The lessor may unilaterally terminate the agreement only in the following instances:

- (i) When the owner needs the property for his own occupation for a period no less than one year.
- (ii) When the property has to be demolished as a consequence of its ruin status, or when a new construction over the property will be carried out by the owner.
- (iii) When it is to be delivered to a third party in fulfillment of the obligations arising from a purchase agreement.

**4. Describe any restriction on rent that may be charged for a tenant.**

According to Housing Lease Law, the monthly rental fee cannot be superior to a value equivalent to 1% over the commercial price of the leased property.

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

Pursuant to Housing Lease Law, the tenant is allowed to terminate a lease agreement prior to its stated expiration date. In this event, the tenant must send a written notice to the landlord through the authorized Postal Service no less than three (3) months prior to the expiry date of the initial term or its renewals. According to the Housing Lease Law, the tenant is allowed to terminate the lease within its initial term or its renewals. In this event, the tenant is bound to pay damages compensation to the lessor equivalent to three (3) rental fees.

In addition, generally Colombian Law allows tenants to terminate a lease prior to its stated expiration date in the event of breach of the lease agreement by landlord.

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

According to Commercial Law in connection with:

- A) Assignment: In the event of transfer of the business establishment by the tenant, he can assign the lease agreement to the purchaser without any authorization by the landlord.

- B) Sublease: The tenant is allowed to sublease up to 50% of the leased area without the authorization of the landlord.

In accordance to Article 2004 of the Civil Code, the landlord's prior consent is required in order for the tenant to assign the agreement or sublease the area.

In connection with the Housing Lease Law, Article 17 states that the landlord's prior consent is required in order for the tenant to assign the agreement or sublease the area.

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

There is no law that expressly allows landlords to restrict assignments or subleases by tenants.

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

This is a special proceeding known as *proceso de restitución de inmueble arrendado*, which is governed by the rules of special abbreviate process that seeks to enforce the restitution of the property to the landlord. This proceeding takes place before the judges and may take approximately from 1 to two (2) years.

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

There are no legal restrictions on pledging a leasehold interest.

**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 under Colombian law for landlords to hold security deposits in connection with lease agreements. There is no prohibition in this regard in the Civil Code nor the Commercial Lease Law.

However, the House Lease Law provides a prohibition to request real deposits and bonds to the lessee. The leases for urban housing will not require cash deposits or other type of bonds in order to ensure the compliance of the obligations by the tenant under this type of contract.

Such guarantees may not be established, indirectly, by an intermediary, by agreements in separate documents that have been recorded in the lease, or by replacement by others under names different from those indicated above.

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

There are no statutory or legal disclosures to be made for tenants under Colombian law.

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

Entering in to a lease agreement requires the payment of the following taxes:

- (i) Stamp tax: is applicable for lease agreements with an amount superior to COP\$140.000.000 (Aprox. USD\$60.000). The amount of the agreement is determined by the sum of the monthly rent payable along the term of the agreement. According to Colombian tax law, the stamp tax rate for 2009 is 0.5% on the total value of the contract and from 2010 this tax will have a rate of 0%.

- (ii) Sales Tax or value added tax (VAT): is applicable to commercial lease agreements and is equivalent to the 10% of the value of the monthly rent of the lease. Usually, this obligation corresponds to the tenant according to the agreement between the parties in this regard.

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

By means of Colombian law, the only self-help remedy that can be exercised by the landlord is the lien right which entitles the landlord to retain the lessee's products derived from the lease and his furniture both of which will be understood as his own goods.

In the event that the self-help right is not effective, the landlord may file an action before a judge in order to initiate an eviction process to obtain the restitution of the property.

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

Pursuant to the Colombian law, it is implied in lease agreements that the termination of the agreement prior to its expiration date, due to the lessee's default, entitles the landlord to request the payment of the rental fees corresponding to the remaining time of the agreement term.

It is important to note that in connection with commercial agreements the lessee will be obliged to pay default interests to landlord in the event of non compliance with the payment of the rental fee in the stated date.

As a mean of damages compensation in lease agreements, the parties usually state a penalty clause that customarily is stated as the equivalent of two rental fees.

In addition, it is important to note that the lessee has retaining right over the leased property in the events when the landlord owes him compensation damages. In this sense, the landlord cannot remove the lessee from the leased property if he has not paid him such compensation.

**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.**

Under the tenants default, the landlord may seek the following expedited remedies:

- Self help right in favor of the landlord to hold the tenants belongings until he fulfills the default.
- Enter in to a lease insurance policy by the lessee in favor of the landlord.

However, there are some remedies that can be agreed by the parties, such as:

- The parties may include a compromising clause in the agreement to resolve any controversy before the arbitral trial in the corresponding chamber of commerce, which is a much more expedited process than the ordinary proceedings in the event of a default.
- The parties may agree on a penalty clause as a mean of damages compensation.

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

There are no formal requirements for the execution of a lease agreement, the consent of the parties alone is sufficient for the execution of a lease agreement. The contract may be verbally agreed upon or supported on a written document.

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

In order to make a lease agreement enforceable between the parties, it is only necessary that the parties consent.

On the other hand, in order to make a lease agreement enforceable against third parties, it is necessary to record it before a notary public by means of a public deed. Such public deed must be duly registered in the corresponding office of the public registry in order for the agreement to be enforceable against third parties.

**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?**

Taking into account that generally there are no restrictions to transfer ownership of a real property subject to a lease agreement, it is important to understand that the lessor rights may be affected in the event that the landlord sells the property subject to a lease, due to the fact that the purchaser is not bound to fulfill the lease agreement.

However, in cases when the lease agreement is recorded by means of a public deed, the purchaser is bound with the continuance of the lease agreement so the tenant's rights and obligations derived from the lease agreement will not be affected.

On the other hand, in connection with mortgages creditors, they are obliged to continue fulfilling the lease agreement only when it is duly registered in the certificate of conveyance and good standing of the leased property.