



ISSUES RELATING TO COMMERCIAL LEASING

HUNGARY Nagy és Trócsányi

CONTACT INFORMATION

Ildikó Varga

Nagy és Trócsányi

1126 Budapest Ugocsa u. 4/B.

36.1.487.8700

varga.ildiko@nt.hu

www.nt.hu

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

Transfer taxes payable on creation or assignment of a lease do not exist under Hungarian law. (sections 18. (2), 102. d) of Act XCIII of 1990 on Duties ("Itv."))

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

Legal restrictions limiting the maximum term of a lease do not exist under Hungarian law. (section 430. of Act IV of 1959 on the Civil Code ("Civil Code"); section 2. (1) of Act LXXVIII of 1993 on Certain Rules of the Lease and Alienation of Residential and Non-Residential Premises ("Housing Act"))

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

Laws requiring landlords to allow a tenant to renew its lease do not exist under Hungarian law (see section 2. above)

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

According to the general rules of the Civil Code, minor expenses required for the



maintenance shall be borne by the tenant; other expenses as well as public duties shall be borne by the landlord. (section 427. (1) of Civil Code) According to the special rules of the Housing Act, in the cases where not agreed upon otherwise by the parties, orders to share tasks (e.g. maintenance, refurbishment and replacement of the floors and tiles, doors and windows, as well as the equipment of the rental property) between the landlord and the tenant in a way that the costs incurred in connection with maintenance and refurbishment shall be borne by the tenant, while the costs incurred in connection with the substitution and replacement shall be paid by the landlord. (section 13. (1) of Housing Act)

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

Termination with immediate effect: Unless otherwise provided by special regulation, the landlord shall guarantee that the object leased out is and will be suitable for use as contracted for the entire duration of the lease period and that it is otherwise in conformity with the provisions of the contract or else the tenant is entitled to terminate the contract with immediate effect. The landlord shall also guarantee that no third person has any right to the leased thing that can prevent or restrain the tenant's use of it or else the tenant is entitled to terminate the contract with immediate effect instead of rescission. (section 424. of Civil Code) [termination by notice]: The tenant is entitled to terminate the contract in writing at any time if such a contract is concluded for an indefinite period of time. The day of termination shall be the last day of the month, although the termination period shall not be less than 15 days. (section 28. of Housing Act) Judicial practice of the recent past appreciate tenants' right to terminate a contract concluded for a definite period.

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

Tenants are allowed to sublease parts of the real property only with the landlord's consent. The rate of the leasing fee is entirely up to the agreement between the landlord and the tenant. It is compulsory to put in writing the contract for sublease. In case of a real property owned by the local government the terms of the landlord's consent are defined in the local government's decrees. (sections 33. (1), 33. (3) of Housing Act) Tenants are allowed to assign, sublease or even swap the leased property only with the landlord's consent. This contract has to be in written form. In case of a real property owned by the local government the terms of the lessor's consent are defined in the local government's decree. (section 42. of Housing Act, section)

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

The tenant is allowed to sublease parts of the real property only with the landlord's consent. The rate of the leasing fee is entirely up to the agreement between the landlord and the tenant. It is compulsory to put in writing the contract for sublease. In case of a real property owned by the local government the terms of the landlord's consent are defined in the local government's decree. The tenant is allowed to assign, sublease or even swap the leased property only with the landlord's consent. This contract has to be in written form. In case of a real property owned by the local government the terms of the landlord's consent are defined in the local government's decree. (see above ref.)

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

Regarding eviction processes, generally, the rules of Act LIII of 1994 on Judicial Enforcement Proceedings ("Vht.") are applicable. As 1st step the court shall issue an enforcement order and the court shall also determine the manner of enforcement. (sections 172-177. of Vht.) Enforcement of Court Decisions on Housing Matters: If the obligor or his representative is not present when the enforcement is carried out, the bailiff takes inventory. If the residential suite is occupied solely by the obligor and his family, it shall be locked and sealed. The bailiff shall postpone the evacuation of a residential property with exceptions for a time other than between 1 Dec and 1 March if the obligor is a private individual. Evacuation of a Residential Suite due to Unlawful Tenancy: The court shall order the evacuation without issuing an enforcement order. It contains instructions to the bailiff to take action for the evacuation within 3 working days. The bailiff serves the decree in person in the presence of a police officer or a witness on the person of legal age who stays in the residential property, and orders this person to vacate the premises and to remove his belongings in 2 days.

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

There are no statutory restrictions on pledging a leasehold interest as security for a financing under Hungarian law.

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.

Expressis verbis requirements for landlords to hold security deposits in separate accounts do not exist under Hungarian law, however this is a general and established custom in business practice.

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

Required statutory or other legal disclosures to be made to all tenants do not exist under Hungarian law. Additional Information: the landlord shall notify the tenant if any work for which is necessary to avert life-danger and for which the landlord is responsible is required. (section 16. (1)-(2) of Housing Act) In the instance of failure to make lease payments, the landlord shall be entitled to terminate the lease with immediate effect, provided that the landlord has issued a written request for remittance of overdue payments. (section 428. (2) of Civil Code)

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

Public duties in connection with the object shall be borne by the landlord. (section 427. (1) of Civil Code) Value Added Tax: The leasing of immovable property is exempt from VAT. Local taxest: The private individuals holding lease rights to a dwelling place owned by a person other than a private individual in the area of jurisdiction of a local government shall be subject to pay community tax. (section 24. of Act C of 1990 on Local Taxes) Corporate tax: Landlords may claim 5% depreciation allowance for leased buildings. The amounts of such

depreciation may be deducted from the pretax profit. (section 7. and Schedule No. 1. of Act LXXXI of 1996 on Corporate Tax) Personal income tax: Generally all revenue received by a private individual, including incomings of the lease of real estate, shall be considered income and tax rate 20% shall be applied. (sections Act CXVII of 1995 on Personal Income Tax)

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

Directly, the landlord may not exercise self-help under Hungarian law. In the instance of failure to make lease payments, the landlord shall be entitled to terminate the lease with immediate effect, provided that the landlord has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the tenant of the consequences, and the tenant has failed to remit payment within this period. (section 428. (2) of Civil Code) If the tenant files a written protest against a lien, extent of it, or the landlord's action to block the removal of property items other than those already providing full cover for his claim, the landlord shall enforce his lien by court action within eight days. Failure to do so shall be construed as forfeiture of the lien (section 429. (3) of Civil Code) The landlord shall offer another place of living (e.g. flat) for the temporarily vacated tenant in the same settlement. This shall be done in the capital city if the temporal vacation is placed in the capital. The placing of the tenant's movable properties and the expenses of moving shall be borne by the landlord. (section 18. (2) of Housing Act)

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

Remedies such as acceleration of rent must be expressly stated in contracts.

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.

Generally, expedited remedies for tenant default do not exist under Hungarian law. The landlord is entitled to demand discontinuance of use that is improper or in violation of the contract and indemnification for damages originating from such use. If such use is continued or if a request for discontinuance fails to bring about success because of the gravity of the danger threatening the leased thing, the landlord shall be entitled to terminate the lease with immediate effect and demand indemnification. In the instance of failure to make lease payments, the landlord shall be entitled to terminate the lease with immediate effect, provided that the landlord has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the tenant of the consequences, and the tenant has failed to remit payment within this period. The landlord (sub-lessor) of a real property or dwelling shall hold a lien on the tenant's property found within the rental property for the value of unpaid rent and any additional costs. Lease provisions that would be required for a landlord to seek expedited remedies do not exist.

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

Lease contract shall be concluded only in written form. In case the applicable laws do not define the rate of the rent and the parties do not come to an agreement regarding the rate, the landlord is obliged to inform the tenant about the rate (sum) in written form. If a tenant do not objected the sum in written form in the coming eight days after being informed about the rate,



the tenant shall pay that amount. The tenant may execute tasks on behalf of and at the landlord's expense, in order to avert warranty default if the tenant does not perform such default averting tasks upon the specified time defined in the tenant's written call. The tenant shall house other third persons only with the landlord's written consent, except if these persons are the tenant's minor children, children of the tenant's children which were born during the housing period. Co-tenant is only allowed to house other person(s) by having the co-tenant's written consent, with the exception of the co-tenant's minor children and children of the co-tenant's children which were born during the housing period. Several other provisions exist.

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

Neither a memorandum of lease nor other further documents would need to be recorded for the lease to be enforceable against third parties. The lease contract is essential and sufficient.

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?

Restrictions on the transfer of ownership of real properties subject to lease do not exist under Hungarian law. The lessee shall be obliged to permit any potential buyers of a thing to inspect it at an appropriate time and in an appropriate manner. A lease contracted for a specific term cannot be cancelled by the buyer of the leased thing, unless the lessee has misled the buyer regarding the existence of a lease or material lease conditions. A buyer shall be entitled to demand that lease payments be made for the period for which the lessee had made such payments in advance to the seller, only if he was not aware of such prepayments at the time the sales contract was concluded and if he could not have known of them, particularly if the lessee had misled him regarding said prepayments. (section 432. of Civil Code)