



ISSUES RELATING TO COMMERCIAL LEASING

PHILIPPINES

Romulo Mabanta Buenaventura Sayoc & De Los Angele

CONTACT INFORMATION

Joaquin Sayoc and Carlos Martin Tayag

Romulo Mabanta Buenaventura Sayoc & De Los Angele

30th Floor Citibank Tower

8741 Paseo de Roxas

City of Makati

63.2.848.0114

Joaquin.Sayoc@Romulo.com and Carlos.Tayag@Romulo.com

www.romulo.com

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

There is a documentary stamp tax on the creation of a lease in the amount of P3.00 for the first P2,000, or fractional part thereof, and an additional P1.00 for every P1,000 or fractional part thereof, in excess of the first P2,000 for each year of the term of the lease. An assignment of lease is subject to the same rate of documentary stamp tax for the unexpired portion of the lease.

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

The maximum term of a lease of land to Philippine nationals is 99 years.

The maximum term of a lease of land to non-Philippine nationals is 25 years, renewable for another 25 years (Presidential Decree No. 471(1974). Under certain conditions, if the lease is made under the Investors' Lease Act (Republic Act No. 7652 (1994)), the lease may be for a term of 50 years, renewable for another 25 years.

A "Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or a corporation organized under

the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least 60% of the fund will accrue to the benefit of the Philippine nationals; Provided, that where a corporation its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least 60% of the capital stock outstanding and entitled to vote of both corporations.

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

There are no such laws; however, applying general contract law, if the lease grants a tenant the right to renew the lease, then the landlord may be compelled by the courts to honor the renewal. Moreover, if at the end of the lease, the tenant continues enjoying the lease with the acquiescence of the landlord, and unless a notice to the contrary by either party has been given, it is understood that there is an implied new lease (from year to year, if rent agreed upon is annual; from month to month, if rent is monthly; from week to week, if rent is paid weekly; from day to day, if rent is paid daily).

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

There are no such restrictions with respect to commercial leases.

The Rent Control Act of 2005 (Republic Act No. 9341 (2005)) applies to “residential units” in the National Capital Region and other highly urbanized cities the total monthly rent for each of which does not exceed P10,000.00 and all residential units in all other areas the total monthly rent for each of which does not exceed P5,000.00. As defined, a “residential unit” shall refer to an apartment, house and/or land on which another's dwelling is located and used for residential purposes and shall include not only buildings, part or units thereof used solely as dwelling places, boarding houses, dormitories, rooms and bedspaces offered for rent by their owners, except motels, motel rooms, hotels, hotel rooms, but also those used for home industries, retail stores or other business purposes if the owner thereof and his or her family actually live therein and use it principally for dwelling purposes.

If the Rent Control Act of 2005 applies, rent shall not be increased by more than 10% annually as long as the unit is occupied by the same tenant. When the residential unit becomes vacant, the landlord may set the initial

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

There are no such laws; however, applying general contract law, if the landlord is in substantial breach of its obligations under the lease, the tenant may be able to terminate the lease prior to its stated expiration date.

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

The tenant cannot assign the lease without the consent of the landlord, unless there is a stipulation to the contrary. An assignment of the lease without the consent of the landlord is a ground for resolution of the lease.

Unlike in assignment of lease, the law provides that the tenant may sublease the property in the absence of express prohibition. The typical contract, however, does not allow the tenant to sell, assign, or sublease without the prior express written consent of the landlord.

If the Rent Control Act of 2005 applies (see response to question no. 4), the tenant may not assign or sublease the property without the written consent of the landlord.

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

It is possible to have an absolute prohibition on assignment or subletting.

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

In an instance where the tenant does not vacate the leased premises even after expiry or termination of the lease, the landlord may file an action in court for ejectment (commonly unlawful detainer or recovery of possession) after a demand to pay or comply with the lease and vacate the premises is made upon the tenant. A favorable judgment would allow the landlord to recover possession of the leased property and a sum justly due for rent in arrears or a reasonable compensation for the use and occupation of the premises.

An action for unlawful detainer may be instituted by any person against whom the possession of any land or building is unlawfully withheld, after the termination of the right to hold possession, by virtue of any contract, express or implied. An action for unlawful detainer must be brought within one year from the last demand to vacate.

If the action for ejectment is brought after one year from last demand to vacate, or if the dispossession was effected by means other than those that are grounds for an unlawful detainer suit, the action shall be for recovery of possession.

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

There are no such legal restrictions.

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 generally no such legal requirements.

If the Rent Control Act of 2005 applies (see response to question no. 4), the deposit shall be kept in a bank under the landlord's account name during the entire duration of the lease agreement. There is no legal requirement that each security deposit must be held separately from the others.

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

There are no such legal disclosure requirements.

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

Aside from documentary stamp tax on the lease agreement, the rent is subject to the following taxes: (a) creditable withholding income tax which is required to be withheld at source by the tenant. This tax is creditable against the income tax due from the landlord; (b) 12% Value Added Tax (VAT), which may be passed on by the landlord to the tenant; and (c) local business taxes.

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

In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. One who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court, if the holder should refuse to deliver the thing (Civil Code of the Philippines, Article 536).

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

Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other (Civil Code of the Philippines, Article 1196).

The tenant may lose his right to make use of the period in the following instances:

- (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;
- (2) When he does not furnish to the landlord the guaranties or securities which he has promised;
- (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;
- (4) When the tenant violates any undertaking, in consideration of which the creditor agreed to the period;
- (5) When the tenant attempts to abscond (Civil Code of the Philippines, Article 1198).

Notwithstanding the foregoing, we would recommend that remedies such as acceleration of rent be expressly stated.

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.

Aside from the summary proceedings for unlawful detainer (see response to question no. 8), there are no such expedited remedies available.

Subject to the limitation on self-help (see response to question no. 13), the agreement may provide that upon failure of the tenant to comply with any of the terms and conditions of the lease agreement or failure to vacate and return the premises as provided, the landlord can be given the right to enter and take possession of the leased premises, without need of resorting to any court action.

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

The Statute of Frauds (Civil Code of the Philippines, Article 1403(2)) requires that a lease for a period longer than one year must be in writing to be enforceable.

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

The lease must be recorded in the Registry of Property to be binding upon third persons (but see response to question no. 18 for the qualification where the Rent Control Law of 2005 applies).

In the Philippines, commercial leases are generally in writing, notarized, and registered.

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 generally no such legal restrictions.

The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may generally terminate the lease, save when there is a stipulation to contrary in the contract of sale, or when the purchaser knows of the existence of the lease.

If the Rent Control Act of 2005 applies (see response to question no. 4), the new landlord shall not be entitled to eject the tenant upon the ground that the leased premises have been sold or mortgaged to a third person regardless of whether the lease or mortgage is registered or not.

Under the Urban Land Reform Act (Presidential Decree No. 1517 (1978)) and related issuances, 244 sites in Metropolitan Manila were declared as Areas for Priority Development and Urban Land Reform Zones. Among the implications of this are that (i) qualified tenants within the zones shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices; and (ii) all landowners tenants and residents within the zones are required to declare to the Housing and Land Use Regulatory Board any proposal.