

DRAFTING

A) LEAVE AND LICENSE
AGREEMENTS

B) LEASE DEEDS AND

C) TENANCY AGREEMENTS

“WHAT IS DRAFTING”

“The practice, technique or skill involved in preparing legal documents – such as statutes, rules, regulations, contracts, and wills that set forth the rights, duties, liabilities, and entitlements of persons and legal entities.”

IMPORTANCE OF DRAFTING

TITLE DOCUMENT

PROOF OF
OWNERSHIP

Drafting

EMBODY THE
PARTIES' RIGHTS

REFLECTS INTENTION
OF PARTIES

POINTS TO AVOID WHILE DRAFTING ANY DOCUMENT



REPETITION

WORDS WHICH HAVE
NO MEANING

SUPERFLUOUS
PHRASES

ARCHAIC
WORDS

ESSENTIALS OF GOOD DRAFTING

KEEP IT SIMPLE



MAINTAIN CONSISTENCY



REFLECT ACCURATE UNDERSTANDING AND INTENTION
OF PARTIES



ENCUMBRANCES ETC

WHAT IS A 'LICENSE'?

- License is defined under Section 52 of Indian Easement Act 1882 as, one person grants permission / right to another, in or upon the immovable property of the grantor, something which would, in the absence of such right/permission, be unlawful.
- It creates no duties and obligations upon the person granting the license and is therefore revocable at will

FUNDAMENTAL FEATURES OF 'LICENSE'

- It is a personal, permissive, non-transferable and unassignable contractual right to use an immovable property for a pre-defined time period, for a certain agreed purpose.
- It cannot be transferred, assigned or inherited.
- It does not confer any interest in the property itself.

ESSENTIAL ELEMENTS FOR DRAFTING A LEAVE AND LICENSE AGREEMENT

- ❖ Duration / Term;
- ❖ Lock-in Period;
- ❖ License Fee and other charges;
- ❖ Goods and Service Tax/ TDS on License Fee and Outgoings;
- ❖ Security Deposit;
- ❖ Adjustment and Forfeiture of Security Deposit;
- ❖ Possession and Keys of the Licensed Premises;
- ❖ Implication of Renewal and Extension clause

STAMP DUTY AND REGISTRATION

- W.e.f. 1st May 2013, the Stamp Duty on a Leave and License Agreement not exceeding 60 months is computed as under:
Monthly License Fee (including escalation) x No. of Months = A
Advance Non-refundable Deposit = B
10% of Refundable Deposit = C
Stamp Duty = 0.25% x (A+B+C)
- A Leave and License Agreement has to be compulsorily registered under Section 55 of Maharashtra Rent Control Act, 1999, the consequences of non-registration is that the contention of Licensee / Tenant as to terms and conditions shall prevail.
- The liability of getting the agreement registered is on the Licensor.

WHAT IS A LEASE

Under section 105 of the Transfer of Property Act, 1882,
a Lease is the transfer of a property, with the right to the Lessee,
to enjoy the property

For a Fixed period of time

On payment of Rent

FUNDAMENTAL FEATURES OF A LEASE

- Lease is a transfer of interest in an immovable property for a pre-defined time period or in perpetuity, in consideration of the lease rent to be rendered periodically or as may be agreed between the parties.
- It cannot be revoked at will while it is in existence unless otherwise provided in the Lease Deed i.e. termination rights, consequences, etc.
- Creates interest in the property in favour of the Lessee

LEASE DEED

ESSENTIAL ELEMENTS:

- ✓ Parties;
- ✓ Subject matter;
- ✓ Rent / Premium ;
- ✓ Period and commencement

IMPORTANT DETAILS

- ❖ Covenants
- ❖ Possession
- ❖ Option to Renew
- ❖ Registration

STAMP DUTY AND REGISTRATION

- Section 107 of the Transfer of Property Act, 1882 and Section 17(1) of the Registration Act, 1908 states that an Agreement of Lease (with possession) or a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.
- Stamp Duty for a Lease Deed is to be paid under Article 36 of the Bombay Stamp Act.

WHAT IS A TENANCY

- Any person liable to pay rent is a Tenant under the Maharashtra Rent Control Act, 1999.
- “Tenancy” is a broader term in comparison to “lease”.
- “Deemed Tenancy” means tenancy which is implied.
- Tenancy is usually month by month and there may not be any documentation executed by the parties for the same

Tenancy Agreement

- ESSENTIAL ELEMENTS:**
- ✓ Parties;
 - ✓ Subject matter;
 - ✓ Rent/Charges;
 - ✓ Period and commencement
 - ✓ Termination

IMPORTANT DETAILS

- ❖ Covenants
- ❖ Possession
- ❖ Registration- Landlord responsibility
- ❖ Sub- Tenancy permitted or not

STAMP DUTY AND REGISTRATION

- Section 55 of the Maharashtra Rent Control Act – stipulates that Tenancy agreements are to be compulsorily registered
- Stamp Duty for a Deed of Tenancy is to be paid under Article 36 of the Bombay Stamp Act.

DISTINCTION

HEAD	LICENSE	LEASE	TENANCY
Ownership and Possession	Both remain with Licensor	Possession passes to the Lessee	Tenant is in possession
Interest in Property	Personal right to occupy for the license period	Creation of interest for the lease period	Tenant has interest on payment of Rent
Sub-letting and Assignment	Not permitted (except if given to hotels, theatres, etc.)	Permitted (if provided in lease)	Permitted with landlord permission

DISTINCTION

HEAD	LICENSE	LEASE	TENANCY
Revocation	Revocable at will	Not revocable at will	Not revocable at will
Eviction	Easier and speedy as compared to lease	Tedious, lengthy and inexpedient	Tedious, lengthy and inexpedient
Dispute Resolution	Small Causes Court and Competent Authority	Small Causes Court	Small Causes Court
Inheritance Rights	Not inheritable	Inheritable	Inheritable



THANK YOU