

LEAVE & LICENSE LEASE AND POWER OF ATTORNEY

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LEAVE & LICENSE AGREEMENT

- Section 52 of Indian Easement Act, 1882 defines License.
- A Leave and License Agreement is granting rights to the licensee to enjoy the immovable property for limited time without granting any right of any kind in the property.
- A license is a personal right granted to a person to do something upon immovable property of the grantor and does not amount to the creation of interest in the property itself.
- It is purely a permissive right and is personal to the grantee.
- It creates no duties and obligations upon the persons making the grant and is, therefore, revocable except in certain circumstances expressly provided for in the Act itself.

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- The license grants right to the licensee to do particular activity on the property.
- Leave and license grants only a right to use the property in particular way or under certain terms.
- The possession of the property remains in the control of the owner.
- The legal possession, thereof, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose.
- Leave and License does not create in Licensee's favour any estate or interest in the property.”

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- A license can be transferred or assigned, if not otherwise provided.
- License is purely permissive right arising only by permission, express or implied, and not by adverse exercise or in any other way.
- License only legalize a certain act which would otherwise be unlawful and does not confer any interest in the property itself in or upon or over which such act is allowed to be done.

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EASEMENT:

As per section 4 of the Easement Act, 1882 which defines "Easement" as "An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. Dominant and servient heritages and owners. The land for the beneficial enjoyment of which the rights exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed its called the servient heritage, and the owner or occupier thereof the servient owner.

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POWER OF ATTORNEY

- As per sec 2(21) of The Power of Attorney Act, 1882, a POA is a formal document whereby a person authorizes another to represent him and act in his name in relation to the acts mentioned in the POA.

General POA

- By which an agent is appointed to act on behalf of the principal in one or several transaction or manage the affairs of the principal generally.

Irrevocable POA

- When the POA cannot be revoked or unturned.

Rules of Drafting

- to be construed strictly
- operative part is governed by recitals if any ambiguity
- authority to do certain specific acts
- general words do not confer general powers
- deed construed to include all incidental powers

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Duration

If any express period is not mentioned in the POA then the same is operative and effective till death of the principal.

POA For Dealing With Immovable Properties –

Can be of two types -

1. General
2. Specific

Registration

POA dealing with immovable properties is compulsorily required to be registered.

Sale By Holder Of Power Of Attorney-

If the sale documents are being executed by a person holding power of attorney on behalf of the owner, the said power of attorney should be scrutinised closely.

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LEASE

As per sec 105 of The TP Act a lease of immovable property is a transfer or a right to enjoy such property for a particular time period whether express, implied or perpetual in consideration of an amount paid or promised to be paid, a share of crops, service or any other thing of value. It creates a right in rem.

How to Create Lease

As per Sec 107 of The TP Act a lease of immovable property can be made –

1. by a registered document if the lease is for more than one year or where the rent is from year to year
2. to be executed by both the lessor and lessee

Lease can be for a certain period of time or perpetual.

Notice to Quit

For the termination of monthly lease a simple notice giving 15 days time to the lessee will be sufficient.

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Rights and Liabilities of Lessor and Lessee –

Sec 108 of The TP Act lays down that in the absence of a contract the lessor and the lessee of immovable property possess the rights and are subject to the liabilities mentioned hereinbelow –

Rights and Liabilities of the Lessor

1. The lessor is bound to disclose to the lessee any material defect in the property
2. the lessor is bound on the lessee' s request to put him in possession of the property
3. if the lessee pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

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Rights and Liabilities of the Lessee

- If any material part of the property is destroyed or rendered substantially and permanently unfit due to force majeure then the lease shall, at the option of the lessee, be void. Provided that, the injury is not due to the wrongful act or default of the lessee
- If the lessor neglects to make any repairs which he is bound to make to the property then the lessee may make the same and deduct the expense of such repairs with interest from the rent, or recover it from the lessor
- If the lessor neglects to make any payment which he is bound to make the lessee may make such payment himself, and deduct it with interest from the rent
- The lessee must notify the lessor of any event which may affect the rights of the owner to the property
- the lessee may remove, at any time all things which he has attached to the earth: provided he leaves the property in the state in which he received it

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- the lessee may transfer absolutely or by way of mortgage or sub- lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it.
- the lessee is bound to restore the property in as good condition as it was in at the time when he was put in possession.
- The lessee is bound to use to the property as a person of ordinary prudence, as if the property is his own.

Sub-Tenancy

To prove sub-tenancy the landlord is required to prove to important conditions –

1. Parting with the possession
2. some consideration

Liability of Lessee after transferring his Interest

The lessee shall not cease to subject to liabilities attached to the lease by reason of his transfer of the same.

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Arrears of Rent

As per section 114 of The TP Act if a lessor files a suit for eviction of the lessee and recovery of possession then the lessee can be allowed to deposit the arrears of rent in the case if notice u/s 106 of The TP Act.

Tenant ‘holding over’

If the lessee after the termination of lease continues to hold possession of the property and the lessor accepts rents or assents to the same then the lease is subject to renewal as the case maybe.

Waiver of Notice

Sec 113 states that if the issuer of notice does an act which signifies that the lease is subsisting then the notice given under sec 111(h) is deemed to have been waived.

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Breach of Express Condition of Lease

Lease can come to an end in the case of breach of express conditions of the lease by lessee. For the said the following must be complied with –

1. There must be a condition in the lease
2. It must be express condition
3. Express condition must provide that in case of breach of same the lessor may re -enter.
4. Lessee breaks such express condition
5. Lessor gives notice to lessee

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Relief against forfeiture for non-payment of rent

For obtaining relief in case of forfeiture for non-payment of rent the following conditions must be fulfilled –

- a condition in the lease regarding payment of rent must be present
- Condition must be express condition
- condition must specify re-entry of lessor.
- lessee breaches such express condition
- lessor gives notice in writing to the lessee to the effect

Difference between Wrongful occupation and unlawful occupation of tenant

Wrongful occupation relates to the act of unfairness or injustice, contrary to law, person not entitled to possession. However unlawful means which is in violation of any law not a mere breach of the terms of the contract. Eg. Occupation of lease property even after efflux of time.

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