

Understanding Leases

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Understanding Leases

(Leasehold Estates)

Landlord–tenant law revolves around the lease contract. The basic law of contracts, applies to leases discussed in this course. The history of landlord–tenant law is vast. Most of the law prior to recent time was established by court decisions called common law. Today, many new statutes drastically change the relationship of landlord and tenant. This course defines and explains the parties in a lease agreement: the essential elements of a valid lease; duties, obligations, and rights of the parties to the lease agreement; and various legal leaseholds.

DEFINITIONS CONCERNING THE LANDLORD/TENANT RELATIONSHIP

A lease is a *contract between the owner of the property and the tenant*. Under the lease agreement, the owner transfers to the tenant a property interest, possession, for a prescribed period of time. The *owner of the property* is called the *landlord* or lessor. The *tenant placed in possession* is called the lessee. The tenant is to have quiet enjoyment of the premises, and the landlord is to receive money plus a reversionary interest in the property; *possession of the property will go back to the owner at the end of the lease*.

Under a lease, the lessor and lessee agree to the terms of possession and the rent to be paid. The benefit of the lease runs both to the lessor and the lessee, so either the lessor or lessee can demand to receive the contracted benefit. The *right to demand and receive the specific benefit* is based upon privity of contract that exists only between lessor and lessee.

Individuals who are not a party to the lease contract cannot demand to receive any benefit from the lease contract. For example, a guest of the lessee has no right to bring legal action against the lessor for lessor's breach of the lease; the guest does not have privity of contract. A person

who receives the rights of the lessee by assignment, however, has privity of contract to bring suit against the lessor. Assignment of contract rights transfers the privity of contract necessary for suit.

A lease is a bilateral contract. Bilateral contracts are discussed in chapter 5. In chapter 5 it is stated that all the contracting parties must sign bilateral contracts. This is accurate. Leases, though, are an exception to this rule. The only party that must sign a lease is the lessor. The lessee acknowledges the lease by moving in and paying rent. This is an old English common law principle handed down over the ages. This is not to say, however, that it is not good business practice to have the lessee sign the lease.

ESSENTIAL ELEMENTS OF A LEASE

In creating a lease, the requirements of offer, acceptance, legal capacity, legal purpose, consideration, and reality of assent apply, just as they do in any contract.

Property Description

A formal legal description of the property is not required. A street address or other informal reference that is sufficiently identifying to both parties is acceptable. If the lease is for a long term, a formal legal description is recommended to accommodate recordation of the contract.

Term

The term of the lease is the period of time for which the lease will exist between landlord and tenant. The term should be specified in a sufficiently clear fashion so that all parties will know the date of expiration and the method to terminate. The term may be cut short prematurely by breach of the lease by one of the parties or by mutual agreement.

Rent

Rent is the consideration the tenant pays to the landlord for possession of the premises. In addition to possession, the rent paid assures the tenant quiet enjoyment of the premises (explained later in the chapter).

The due date of the rent should be stated in the lease. If the lease does not state when the rent is due, then the rent will be due at the end of the rental term: on a one-year lease the rent would be due in one single payment at the end of the year; on a 10-year lease it would be due in a single payment at the end of the tenth year. This concept of payment in arrears is again from English common law, where the traditional thought is that a user should be able to use something before being obligated to pay for it. Lessors are usually very careful to stipulate in the lease when the rent is due.

Other Lease Provisions

Leases may contain additional provisions setting out specific agreements of the landlord and tenant. One common provision is an option to renew the lease. This *sets forth the method for renewal and the terms* by which the renewed lease will exist. The parties also may include in the lease an option to buy. *This provision allows the tenant to purchase the leased premises for a certain price for a certain period of time.* In commercial leases, a right of first refusal is often *given to a tenant to allow an opportunity to expand into a specified additional space before it is leased to another tenant.* The tenant with the right of first refusal has the right to match the offer that a lessor gets from a bonafide potential tenant for this space. If the tenant with the right of first refusal wants that space at that price, the tenant gets the space and the potential tenant is off looking for space elsewhere.

Many commercial leases will contain a provision for the tenant to issue an estoppel certificate to a prospective purchaser. *In the estoppel certificate, the tenant acknowledges the remaining terms of his lease.* An estoppel certificate is considered a certificate of “no defense.” A tenant issuing an estoppel certificate would be prohibited from later

asserting that the lease is subject to different terms. Estoppel certificates are also referenced in selling of mortgages in the secondary mortgage market.

Another clause that is inserted in many commercial leases is the nondisturbance clause, *which will protect the lessee's leasehold interest if a mortgagee forecloses on the owner of the property.*

In most written leases, provisions stating who has the responsibility for maintenance and repair are included. Also, the landlord usually includes a provision prohibiting assignment of lease rights or subleasing of the premises by the tenant (discussed later in the chapter) without the landlord's approval.

Written or Oral Provisions

The Statute of Frauds in Illinois requires that leases for a period longer than one year be in writing to be enforceable by the court. Oral leases for one year or less can generally be enforced by the courts. If a written lease is used, it is good business practice for both the lessor and lessee to sign the lease. However, common law requires only the lessor to sign the lease. The lessee acknowledges or confirms the lease by taking possession of the property.

Recordation

Most short-term leases are not recorded, but for ground leases (discussed later), leases of more than one year in duration, and leases with an option to buy, it is in the best interest of the tenant to record the lease in the county where the property is located. Possession of the property by the tenant also provides actual notice. Recordation provides constructive notice of the tenant's rights in the event of sale of the property or death of the landlord.

OBLIGATIONS OF LANDLORD AND TENANT

The common law of leases, which is the law set by past court decisions, has established the obligations of landlord and tenant in many

states. In recent years, however, with an increase in the number of residential tenants, some states have passed specific legislation setting out the obligations of landlord and tenant. The most widely used statute is called the Uniform Landlord and Tenant Act. Illinois does not have such an act. Illinois follows precedent set by case law (common law) and specific state statutes. However, many cities including Chicago, have adopted their own Landlord Tenant Act (CLTA). If the property being leased is in Chicago, the lessee must comply with the CLTA.

Whether under the common law or under specific statute, terms of the lease control the obligations and duties of landlord and tenant. Without a lease agreement to indicate which party is responsible for certain items, common law or the specific state law dictates the responsible party.

Mutual Obligations

Under contract law, the validity of a contract can be challenged if both parties are not bound or if both parties have not received consideration. Under a lease, the landlord's consideration is receipt of rent. The tenant's consideration is possession of the premises and the right of quiet enjoyment. The landlord's obligation to give possession of the premises to the tenant is directly tied to the tenant's payment of rent. If one party fails in his responsibility (consideration), the other party may be relieved of his duty. (Because of the interplay of many of the rights and duties—payment, maintenance, liquidated damages, and so on—one should never assume the relief of one's duties without court support of this position.)

Landlord's Duties

The landlord is required to put the tenant in possession of the premises. The tenant is entitled to quiet enjoyment of the premises, meaning that *no one will interrupt the tenancy or invade the premise without the tenant's consent*. This includes the landlord. The landlord does not have an automatic right to inspect the leased premises although

the tenant may agree, in the lease, to the landlord's right to inspect. The landlord also has the right to enter the premises in an emergency, such as in the case of fire or burst water pipes, to protect the premises.

In the case of residential property, the landlord usually is obligated to have the premises in *habitable*, or *livable*, condition at the beginning of the lease and to maintain the premises in habitable shape during the term of the lease. (The concept of an implied warranty of habitability was confirmed by the Illinois Supreme Court in 1972.) The requirement for maintenance may be shifted to the tenant by agreement of the parties. The landlord also is required to warn the tenant of any dangers that are not obvious (latent dangers) such as electrical circuit problems, loose floorboards or steps, or holes in the floor hidden by carpet.

Unless the lease agreement specifically states the contrary, the lease allows for the tenant to assign his lease or to sublease. In an assignment, the assignor (original lessee) transfers all his rights to the assignee without retaining a reversion or remainder in the lease. In a sublease, *the sublessor (original lessee) gives the sublessee his rights in the lease while retaining an interest in the lease*. We refer to this lease as a sandwich lease and the sublessor as the sandwich man.

Tenant's Duties

The tenant's basic obligation under any lease (apart from the payment of rent) is to maintain the premises in the same condition as at the beginning of the lease, with ordinary wear and tear excepted. This is the usual deterioration caused by normal living circumstances. The tenant will be held responsible for damage or waste. During occupancy, the tenant is expected to use the premises only for legal purposes and to conform to all local laws.

The tenant is obligated, of course, to pay the agreed-upon rent in a timely fashion. Under common law, rent is due at the end of the lease period unless the lease agreement states otherwise. Because this is typically unacceptable to the landlord, lease agreements usually require rent to be paid in advance on a month-to-month basis.

At the end of the lease, the tenant is obligated to vacate the premises without the need for legal eviction by the landlord.

If the tenant has guests (invitees) or customers (licensees), the tenant must warn them of any hidden dangers that might cause harm.

Putting It to Work

Because of the many variables involved and the subjective nature of the words “reasonable” and “wear and tear,” the lease should outline specifics such as “lawn maintained in present condition,” “carpets cleaned by tenant annually,” and so on.

Law of Negligence

Negligence is defined as a *failure to use that care that a reasonable person would use in like circumstances*. The term is relative and depends on the circumstances of each case. Under the law of negligence, a person is liable for damages that result to another person if a duty to that person is owed and the duty is not performed in a reasonable fashion.

Under landlord–tenant law, the landlord is responsible for damage that occurs to the tenant, tenant’s guests or clients, or tenant’s possession only if the landlord has a duty to that person and the landlord fails to perform that duty. An example of landlord negligence is if the landlord assures the tenant that all plumbing apparatus is properly maintained at the premises and the plumbing then ceases to function because of improper maintenance, and as a result of the faulty plumbing, the tenant’s possessions are damaged. Negligence law does not apply where, through no lack of maintenance, the plumbing ceases to function or if the plumbing ceases to function as a result of the tenant’s action and damage occurs to the tenant’s possessions.

The duty of care imposed upon the landlord is the care that a reasonable and prudent person would exercise under like conditions. A landlord’s liability also may be created by failure to comply with basic safety codes and laws. Examples of this might be failure to install a

smoke alarm or porch railing. Any injury because of the absence of these features results in liability on the part of the landlord.

The law of negligence also applies to tenants. If tenants do not exercise reasonable care in their use of the premises and damage occurs to the landlord's property, the tenant is liable for the resulting damages.

Lead Paint Disclosures

The Illinois Lead Poisoning Prevention Act requires the owners of residential rental units constructed before 1978 to provide tenants with a brochure prepared by the Department of Public Health concerning lead paint. Unless the owner has corrected the problem and received a certificate of compliance, the owners of any rental cited for lead paint must give prospective tenants written notice of the citation. EPA/HUD lead-based paint regulations that became effective in 1996 are discussed later.

Withholding Rent

In some cases, the tenant can claim *constructive eviction* and thus be relieved of the obligation to pay rent. In such cases, through the landlord's lack of care, the tenant has been evicted, for all practical purposes, because enjoyment of the premises is not available. This usually happens when heat and water are not available to the tenant because of the landlord's lack of care. To claim constructive eviction in most states, however, the tenant must actually vacate the premises while the conditions that make the premises uninhabitable still exist. The lease is terminated under the claim of constructive eviction. This is not an automatic right that the tenant can assume; it may have to be litigated.

Security Deposits

Most landlords require the tenant to deposit a certain *sum of money that will be refunded at the end of the lease* based on the condition of the premises. This security deposit often is negotiated as one or two

month's rent. The money is intended for repair of only that damage the tenant causes beyond ordinary wear and tear, and the landlord is not to use it for basic cleaning and repainting. However, the landlord is allowed to charge the tenant a separate sum for cleaning and repainting if it was agreed to in the lease. In some cases the landlord is to pay interest to the tenant for the moneys held as deposits.

The Illinois Security Deposit Return Act *provides that persons leasing residential property containing five or more units cannot withhold any part of a security deposit for compensation for property damage unless an itemized statement of the damage along with the estimated or actual cost of repairs is provided to the lessee.* The statement must be provided within 30 days of the date the lessee vacated the premises and can be delivered in person or by mail. Actual receipts must accompany the statement or must be delivered within 30 days of the estimate. If the lessor does not meet any of the provisions, the lessee must be given the full amount of the security deposit within 45 days of vacating the premises. The lessor may utilize her own labor to repair any damages the lessee caused and include the reasonable cost of her labor to repair the damage.

For residential properties with 25 or more units, the lessor must pay interest on security deposits at an interest rate equal to the rate on the minimum passbook account of the largest commercial bank in Illinois. The security deposit must have been held for more than six months.

If the landlord fails to comply with any and all requirements, the tenant may collect double the security deposit plus court costs and attorney fees.

Remember, if the property is located in Chicago, the Lessor must comply with the Chicago Landlord Tenant Act (CLTA) which has very different requirements on security deposit interest, the handling of repairs and lease renewal and termination. We do not discuss the CLTA in this text or in the class because the state real estate exam is actually that, a statewide exam. You will not be responsible for any local questions.

Other Laws Affecting the Rental of Property

The Civil Rights Act of 1968 and the Americans with Disabilities Act (ADA) are just two laws that have a significant effect on the rental of property. Fair housing laws and the ADA are discussed in Chapter 12. In addition, many local municipalities have passed their own landlord–tenant acts and fair housing laws. Chicago, for one, has a very extensive landlord–tenant act. When involved in the rental of property, the owner or manager should inquire about any additional rental law requirements imposed by the municipality in which the property is located.

Termination and Eviction Remedies

A lease may terminate in a variety of ways. The simplest way is for the lease term to expire. At expiration of the lease, if proper notice to terminate the lease was given (see Figure 13.1) and no renewal agreement is reached, the duties and rights of the landlord and tenant terminate. The tenant vacates the premises, and possession reverts to the landlord.

The landlord and tenant also can mutually agree to cancel a lease before expiration of the term. This is called surrender. Mutual cancellation also terminates the parties' duties and rights. Possession reverts to the landlord. Because cancellation of the lease is by mutual agreement, it may occur after a breach of the lease by either party.

FIGURE 13.1 Illinois requirements regarding notice to terminate a periodic estate.

Type of tenancy	Notice required to terminate:
Year-to-year	60 days written notice
Month-to-month shorter than	30 days written notice (if for a period a year but longer than a week)
Week-to-week	7 days written notice
Farm tenancy year-to-year	4 months written notice

Destruction of the premises may or may not terminate a lease. Leases that include building and land (single-user properties such as a single-family homes, freestanding stores, or freestanding industrial buildings) typically do not terminate with the destruction of the premises. The lease for one unit in a multi-unit building would be terminated upon the destruction of the premises. A renter in an apartment building, therefore, would have her lease terminated and would no longer be responsible for the rent. A renter of a single-family home, however, could find himself responsible for the remainder of the lease.

The lease also can be terminated by the landlord's evicting the tenant. This can occur during the term of the lease if the tenant breaches the agreement—for example, by failing to pay rent. It also can occur *after the lease agreement expires and the tenant fails or refuses to vacate the premises*. At this point, the tenant is called a **holdover tenant**, and the landlord requests ouster of the tenant and his belongings and return of possession of the premises. In some cases, the landlord requests a landlord's lien on the tenant's belongings as security for payment of rent owed. This type of lien on personal property falls under the Uniform Commercial Code (UCC).

An Illinois landlord may serve a tenant who defaults on the rent with a five-day written notice of demand for payment of the rent. If the tenant does not pay the rent, the landlord may terminate the lease automatically and sue for possession without further notice.

If a tenant defaults on terms of the lease, including failure to pay the rent, a 10-day written notice may be served on the tenant. This notice terminates the lease and demands possession of the property. If the default is cured after the 10-day period following notice, the landlord may still sue for possession without further notice. If nonpayment of rent was the only default and the landlord thereafter accepts rent, he or she has waived the right to proceed with the suit. Illinois allows both the five- and ten-day notices to be served by personal delivery to the tenant or to anyone 14 years or older residing on the premises. The notice can also be sent by certified or registered mail or may be posted on the premises.

Eviction is a legal action in the court system for removal of the tenant and her belongings and a return of possession of the premises to the landlord. Eviction is different from **self-help**, in which the landlord, without the aid or control of the court system, physically removes the tenant and her belongings from the premises or takes action to prevent tenant access to the premises. This is a violation of common law by the landlord. Illinois does not allow self-help.

Landlords in Illinois, to evict a tenant must file a suit for **forcible entry and detainer**, in the circuit court of the county where the property is located. The landlord names an appearance date in the complaint, and the tenant is required to appear in court not fewer than seven days or more than 40 days after the service of summons.

The tenant may request a jury trial; if not requested, the trial is held on the appearance date. If the court finds in favor of the landlord, a judgment for possession and moneys owed will be entered. An order of possession will be issued. If after a judgment the tenant refuses to leave the premises, the order will be delivered to the sheriff, who will forcibly evict the tenant.

A landlord seeking eviction is well-advised to hire an attorney to handle an eviction proceeding or to obtain a copy of the court rules and forms to assure compliance.

As set out earlier, a lease also can be terminated by the tenant's claim of constructive eviction. This claim is limited to residential properties.

A lease also can terminate if the tenant abandons the premises and the landlord reenters to accept return of possession of the premises. This is similar to cancellation of the lease. Upon the tenant's abandonment, the landlord does not have to accept return of the premises; instead, he can pursue the tenant for rent under the lease. If the landlord does accept return of the premises, he may still pursue the tenant for lost rent under the old lease. The landlord must use his best efforts to re-rent the premises. This is called mitigating damages.

A lease agreement does not always terminate upon the death of the landlord or the tenant. The type of leasehold existing between the

landlord and tenant determines whether the lease survives at death of a party. These leaseholds are discussed next. The lease agreement does not terminate upon a landlord's selling the premises. The new owner is bound by the terms of the lease.

Leasehold (Nonfreehold) Estates

Leasehold (nonfreehold) estates were discussed initially in Chapter 2, in conjunction with the bundle of rights in the ownership of real estate. A leasehold estate is also called a rental estate. These estates are less than a lifetime. Leasehold estates are created by a contract providing contractual rights and duties to both parties, as discussed earlier in this chapter. Leasehold estates provide possession, but not title, to the tenant. The owner retains the title and the right of reversion of possession upon termination of the lease. The relationship of landlord and tenant exists between the parties. These estates may be called estates, tenancies, or leaseholds.

Estate for Years

The key feature of the estate, tenancy, or leasehold for years is that it exists for only a fixed period of time. The term "years" is misleading in that the estate does not have to be in effect for a year or more but simply for a fixed period, which can be as short as a week or even one day. At the end of that stated time, the estate (rental agreement) terminates automatically without any need for either party to give notice to the other. If any uncertainty exists about the duration of the lease, it is not an estate for years.

Illinois requires that if this estate is for more than one full year, the lease must be in writing to be valid. The lease does not have to be recorded to be valid. The tenant's rights are established by possession of the property. If the property is sold with a tenant in possession at the time of sale, the purchaser will have to honor the lease. At the death of either the landlord or the tenant, heirs of the deceased party are bound by the terms of the lease. The lease is considered to be inheritable because the obligations and rights of the lease pass to the estate or heirs

of the decedent.

Periodic Estate (Tenancy from Year-to-Year)

The estate, tenancy, or leasehold from year-to-year is commonly known as a periodic tenancy. The term “year-to-year” is misleading in that the estate does not have to be in effect for one year or more. The period length can be a week, a month, or any other negotiated time period. The key feature of a periodic lease is that it *automatically renews itself for another period at the end of each period unless one party gives notice to the other* at the prescribed time prior to the end of the lease. This notice period may be one to three months, depending upon the state of residence. For example, if the required notice period is one month and the parties enter the last 30 days of the lease without notifying the other of any change, a new lease is created automatically for another period at the same terms. (See Figure 13.2.) At the death of either the landlord or the tenant, heirs of the deceased party are bound by terms of the lease, including giving notice if the heirs wish to terminate.

Estate (Tenancy) at Will

In the estate at will, duration of the term is completely unknown at the time the estate is created, because either party may terminate the lease simply by giving notice to the other party. This type of leasehold is typical in a casual arrangement, such as a family setting in which a parent rents to an adult child. At the death of either the landlord or the tenant, this leasehold terminates, unlike the estate for years and the periodic lease.

Estate (Tenancy) at Sufferance

An estate at sufferance is not truly an estate that the parties voluntarily establish. This term is used simply to describe a tenant who was originally in lawful possession of another’s property but refuses to leave after his right to possession terminates. This might be upon

termination of any of the three previously discussed leases. The term “estate at sufferance” differentiates between the tenant at sufferance,

Putting It to Work

Rights and duties of the parties regarding notice, termination, and inheritance are determined first by which of the four leaseholds exists. The difference between the leaseholds is not in how long they last but, rather, in the agreement as to when and how termination is established. The termination may be at a fixed date (estate for years), at the end of a recurrent period (periodic estate), or open-ended (estate at will).

who originally was in lawful possession of the property, and someone who has been on the property illegally from the beginning (trespasser). The estate at sufferance continues until the property owner brings a legal action to evict the person wrongfully holding over or until the one holding over vacates voluntarily. During this period, the occupier is called a tenant at sufferance. A tenant at sufferance is not a trespasser. The legal action to remove a tenant at sufferance is eviction, not an action in trespass.

TYPES OF LEASES

Gross and Net Leases

The two primary classifications of leases, based on arrangement of payment of expenses of the rental property, are gross lease and net lease. A gross lease provides for *the owner (lessor) to pay all expenses*, such as real property taxes, insurance, and maintenance. In a net lease, *the tenant (lessee) pays some or all of the expenses*. Sometimes the net lease is referred to as net, double net, or triple net, depending upon how many property expenses the tenant pays. *Lessors with properties of more than one unit charge back the expenses on a property to the tenants with a common area maintenance (CAM) charge*. Each tenant pays a percentage of the common area expenses based on the percentage of total space he or she occupies. Certain other expenses of the property,

such as income taxes, depreciation, and mortgage payments, are not considered operating expenses. These are the owner's personal expenses, not expenses of the building.

Variations of the standard lease are discussed next. Any of these variations can be either gross or net. The arrangement for paying property expenses is the determining factor.

Graduated Lease

A graduated lease is one in which the *rental amount changes from period to period* over the lease term. The lease contract specifies the change in rental amount, which usually is an increase in stair-step fashion. This type of lease could be utilized for a new business tenant whose income is expected to increase with time.

Escalated Lease

An escalated lease, usually a gross lease, *provides for rental changes in proportion to changes in the lessor's cost of ownership and operation of the property*. As the lessor's obligations for the real property taxes and operating expenses change, the lease rent changes in specified proportions.

Index Lease

Rental increases in an index lease are determined by tying rent increases to the consumer price index (CPI) or some other government index. The CPI is an index maintained by the Bureau of Labor Statistics of the U.S. Department of Labor that tracks the price level of certain consumer goods and services. A cost of living adjustment (COLA) is derived from changes in the CPI. Increases in the COLA are applied to the current rent to calculate a rental increase.

Fixed Lease

A fixed lease is one in which the *rental amount remains constant during the term of the lease*. This is sometimes called a flat lease.

Reappraisal Lease

With a reappraisal lease, *changes in rental amount are based on changes in property value, as demonstrated by periodic reappraisals of the property*. These appraisals may occur at three- or five-year intervals in the case of a long-term lease. The rent changes a specified percentage of the previous year's rent as spelled out in the lease.

Percentage Lease

Many retail commercial leases are percentage leases. A percentage lease has *a base rent plus an additional monthly rent that is a percentage of the lessee's gross sales*. Most commercial leases in cases where the lessee is using the property to conduct a retail business are percentage leases. This is especially true of shopping malls. The percentage lease provides the lessor with a guaranteed monthly rental plus the opportunity to participate in the lessee's sales volume on a percentage basis.

Ground Lease

A ground lease is a *lease of unimproved land*, usually for construction purposes. The ground lease normally contains a provision that the lessee will construct a building on the land. Ownership of the land and improvements is separated. The ground lease is typically a long-term lease to allow the lessee sufficient time to recoup the cost of improvements. This type of lease also is typically a net lease in that the lessee is required to maintain the improvements, pay the property taxes, and pay the expenses of the property.

Oil and Gas Leases

In oil and gas leases, the landowner usually receives a one-time lease payment in exchange for giving the oil and gas company the right to drill for oil or gas for a long period of time. Another way it could be setup would be in providing royalties. If no drilling occurs but the oil and gas company wishes to continue the lease, it typically pays a small flat monthly or annual fee. If no drilling occurs and the company does not make any further payments, the lease expires and terminates.

Sale and Leaseback

A sale and leaseback is a *transaction wherein a property owner sells a property to an investor and the investor agrees to immediately lease back the property to the seller*. This type of transaction usually is used by an owner of business property who wishes to free capital invested in the real estate and still retain possession and control of the property under a lease.

IMPORTANT POINTS

1. A lease is created by contract between the owner of property and the tenant. The landlord or owner is the lessor; the tenant is the lessee.
2. The landlord and tenant are bound by contractual rights and obligations created by the lease agreement.
3. The transfer of the entire remaining term of a lease by the lessee is an assignment. A transfer of part of the lease term with a reversion to the lessee is a subletting.
4. In a lease of residential property, the landlord has the duty to provide habitable premises to the tenant.
5. The tenant has a duty to maintain and return the premises to the landlord, at expiration of the lease, in the same condition as at the beginning of the lease, ordinary wear and tear excepted.
6. The tenant can make a claim of constructive eviction when the premises become uninhabitable because of the landlord's lack of maintenance. A claim of constructive eviction will terminate the lease.
7. The Illinois Lead Poisoning Prevention Act requires the owners of residential rental units constructed before 1978 to provide tenants with a brochure concerning the health hazards associated with lead paint.
8. Leases are terminated by (a) expiration of lease term, (b) mutual agreement, (c) breach of condition, (d) self-help, (e) court-ordered eviction, or (f) constructive eviction. The law does not favor self-help.
9. The return of security deposits in the leasing of residential properties containing five or more units is regulated by the Illinois Security Deposit Return Act. No part of the security deposit can be withheld for compensation of damages unless an itemized statement of the damages, along with the estimated or actual cost of the repairs, is provided within 30 days of the date of vacation of the premises.
10. A tenant who defaults on the rent may be served with a five-day written notice for demand of payment of the rent. If not paid, the landlord may terminate the lease and sue for possession without further notice.
11. If in default on nonpayment of the rent or other terms of a lease, a 10-day notice may be served on the tenant. This notice terminates the

lease and demands possession of the property. Even if the default is cured, the landlord may sue for possession of the property.

12. Leases are nonfreehold estates. A tenant at sufferance is not a trespasser.

13. Landlords may file a forcible entry and detainer action to begin eviction proceedings.

14. Illinois requires that leases for more than one year be in writing to be enforceable in a court.

15. The two main classifications of leases are gross lease and net lease. Under a gross lease, the landlord pays the real property taxes, insurance, and maintenance of the property. Under a net lease, the tenant pays some or all of these expenses.

16. Types of leases include the graduated lease, escalated lease, index lease, fixed lease, reappraisal lease, percentage lease, ground lease, oil and gas leases, and sale and leaseback.

REVIEW QUESTIONS

Answers to these questions are found in the Answer Key section at the back of the book.

1. A transaction in which a lessee transfers the remainder of a lease term without reversion is a(an):
 - A. assignment
 - B. option to renew
 - C. sandwich lease
 - D. sublease

2. Which of the following leaseholds has the characteristic of a definite termination date agreed upon by the parties?
 - A. periodic estate
 - B. estate for years
 - C. estate at will
 - D. estate at sufferance

3. A tenant at sufferance is:
 - A. the owner of a freehold estate
 - B. a trespasser
 - C. a holdover tenant
 - D. a lessor in possession

4. When a lease terminates with no right to renew and the tenant fails to vacate, the tenant is holding a(an):
 - A. estate for years
 - B. estate at will
 - C. estate at sufferance
 - D. periodic estate

5. According to the Statute of Frauds, an oral lease for five years is:
- A. enforceable
 - B. unenforceable
 - C. assignable
 - D. renewable
6. A lease with a term from January 1 to July 1 of the same year is a(an):
- A. estate for years
 - B. estate at will
 - C. estate at sufferance
 - D. periodic estate
7. The right of the lessee to uninterrupted use of the leased premises is called:
- A. conveyance
 - B. quiet enjoyment
 - C. quiet commencement
 - D. letting the premises
8. If cost of maintenance is increasing and rents are increasing, a fixed lease arrangement for a long term is advantageous to:
- A. the tenant
 - B. the landlord
 - C. both landlord and tenant
 - D. neither landlord nor tenant
9. Mr. A buys a building owned by Ms. X. Ms. X has leased the building to ABC Company for seven years. Mr. A must:
- A. renegotiate the lease with ABC
 - B. evict ABC to get possession
 - C. share the space with ABC
 - D. honor the lease agreement

10. Which of the following lease arrangements is designed to allow the lessee to receive her capital investment from the leased property?
- A. percentage lease
 - B. index lease
 - C. step-up lease
 - D. sale and leaseback
11. A lease from period to period will not be terminated by:
- A. mutual agreement of the lessor and lessee
 - B. eviction by the court
 - C. death of the lessor
 - D. abandonment by lessee and acceptance by lessor
12. Paul, an 18-year-old musician, has entered into an oral lease for an apartment in Chicago for two years. Under the circumstances, which of the following statements is **TRUE**?
- A. Paul may not enter into a valid lease contract
 - B. Paul's lease is not enforceable in court
 - C. Paul's lease is enforceable in court
 - D. Paul may cause damage to the property without recourse
13. When a tenant under a valid lease gives up possession of the leased premises to the landlord before expiration of the lease, it is called:
- A. novation
 - B. abatement
 - C. abandonment
 - D. renunciation
14. A lease that provides for an adjustment in rent to cover the lessor's operating expenses is called:
- A. escalated
 - B. accelerated
 - C. sufferance
 - D. gross lease

15. Under a residential lease, if the lessor does not provide habitable premises, the lessee can claim:

- A. eviction
- B. constructive eviction
- C. habitability damages
- D. mitigation of damages

16. The Whitings caused considerable damage to the condominium unit they had rented. The landlord deducted a charge for the damages from the Whitings' security deposit. Which of the following statements is **INCORRECT**?

- A. the landlord can deduct the cost of the damages plus \$50 for the landlord's labor in making the repairs
- B. the landlord can charge for damages that he repaired himself
- C. the landlord must present an itemized estimate for the repairs within 30 days of the vacating of the premises
- D. the landlord must provide an itemized statement for repairs within 30 days of providing the estimate

17. If a lease does not state when the rent is due, then the rent automatically will be due:

- A. on the first of the month
- B. on the fifteenth of the month
- C. at the end of the month
- D. at the end of the lease term

18. Louis rents an apartment in Springfield, Illinois. Louis is two months behind in his rent payment. The landlord, who wishes to sue for payment must first:

- A. serve Louis with a 5- or 10-day written notice demanding payment
- B. terminate the lease
- C. notify the sheriff
- D. lock Louis out of the apartment

19. A lease with a fixed low base rent plus an additional amount based upon gross receipts of the lessee is a(an):
- A. percentage lease
 - B. gross lease
 - C. net lease
 - D. escalated lease
20. The final tenant in sale and leaseback is the:
- A. seller
 - B. buyer
 - C. lessor
 - D. mortgagor
21. Under a lease, the reversionary interest is owned by the:
- A. lessor
 - B. lessee
 - C. tenant for years
 - D. life tenant
22. At the death of the landlord under an estate for years, the lease is:
- A. terminated
 - B. expired
 - C. not affected
 - D. cancelled
23. Kendra's apartment in a large apartment complex is destroyed in an explosion. Which of the following is correct?
- A. Kendra's lease is terminated
 - B. Kendra must accept an apartment elsewhere in the complex for the remainder of her lease
 - C. Kendra must find a place to live until the building is repaired and is then obligated for the remaining months still on her lease
 - D. Kendra must follow the directives of the property manager regarding relocation

24. The Illinois Security Deposit Return Act requires the lessor of properties containing 25 or more units to pay interest on security deposits at a rate:
- A. of 5 percent
 - B. 1.5 percent below the 12-month average of treasury bills
 - C. equal to the minimum passbook account of the largest commercial bank in Illinois
 - D. equal to the cost of funds index published by the Federal Home Loan Bank Board
25. The Illinois Lead Poisoning Prevention Act requires owners of residential units constructed before 1978 to:
- A. remove all substances containing lead
 - B. test each unit for lead paint
 - C. post notices of lead paint contamination at each entry of the unit
 - D. provide tenants with a brochure concerning lead paint
26. A tenant vacates his apartment during the third month of his one-year lease claiming the place is uninhabitable due to the chronic lack of sufficient heat. Which of the following is TRUE?
- A. the landlord has constructively evicted the tenant
 - B. the tenant will be held liable for the remainder of the lease.
 - C. the tenant cannot leave under any circumstances
 - D. the tenant must sublet the unit