

Modern Real Estate Practice in Illinois, 6th Edition
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Chapter 17: Leases

Learning Objectives

After reading this chapter, students should be able to:

- Identify the four types of leasehold estates.
- Describe the requirements and general conditions of a valid lease and how a lease may be discharged.
- Explain the rights of landlords and tenants in an eviction proceeding and the effect of protenant legislation and civil rights laws on the landlord-tenant relationship.
- Distinguish the various types of leases.
- Define the following key terms; actual eviction; assignment; cash rent; constructive eviction; estate at sufferance; estate at will; estate for years; estate from period-to-period; gross lease; ground lease; holdover tenancy; implied warranty of habitability; lease; leasehold estate; lease purchase; lessee; lessor; month-to-month tenancy; net lease; percentage lease; rental-finding service; reversionary right; security deposit; sharecropping; subleasing; triple-net lease.

Why Learn About Leases?

According to the U.S. Bureau of the Census, 67 percent of Americans own their own homes. That means about a third of the population rents. In 1998, there were more than 14 million rental units in the U.S. In short, there are a lot of renters and a lot of rental housing, which together means there is a very large rental market. Many of those renters seek the advice of rental agents, who are required to be real estate licensees in most states. Even if you aren't a rental agent, a knowledge of the rental market and leases and landlord-tenant issues may prove valuable if your potential buyers turn out to not qualify for a home purchase and need help finding an apartment.

Suggested Items to Bring To Class

1. Copies of the various types of leases, both blank and completed.
2. A copy of your jurisdiction's landlord and tenant laws.

Lecture Outline

I. Leasing Real Estate

A lease is a contract between an owner of real estate (lessor) and a tenant (lessee) to transfer the lessor's rights to exclusive possession and use of the property to the tenant for a specified period of time.

IN ILLINOIS . . . *(and most other states) the statute of frauds requires lease agreements to be in writing to be enforceable if they are for more than one year or are leases for one year or less that cannot be performed within one year of the date on which they are made. Verbal leases for one year or less that can be performed within a year of their making are enforceable. Both lessor and lessee should always sign written leases.*

II. Leasehold Estates

A tenant's right to possess real estate for the term of the lease is a leasehold estate. A leasehold is generally considered personal property.

A. Estate for Years

A leasehold estate that continues for a definite period of time and automatically terminates at the end of that period. No notice is required to terminate the estate for years.

B. Estate from Period to Period (Periodic Tenancy)

Created when a landlord and tenant enter into an agreement for a definite time that will automatically renew unless notice of termination is given by one of the parties

IN ILLINOIS . . . *a holdover tenancy is created when a tenant stays after termination of a lease but then an offer and acceptance of rent is made. The tenancy is for the same term as the estate from period to period.*

1. Termination

To terminate a periodic estate, the landlord or tenant must give proper notice one period in advance.

IN ILLINOIS . . . *the notices required by statute are:*

- *Tenancy from year to year: at least 60 days' written notice within the four-month period prior to the last 60 days of the lease period*
- *Tenancy from month to month: 30 days' written notice*
- *Tenancy from week to week: seven days' written notice*
- *Farm tenancies from year to year: four months' written notice, with termination only at the end of the period*

C. Estate at Will

A tenancy of indefinite duration; it continues until it is terminated by either party giving proper notice. Automatically terminated by the death of either party.

D. Estate at Sufferance

A tenancy that arises when a tenant who lawfully possessed real property continues in possession of the premises without the landlord's consent after the rights expire.

IN ILLINOIS . . . *a landlord has the option of considering a holdover tenant's action as being a willful withholding of possession; the landlord is entitled to charge double rent.*

III. Lease Agreements

A. Requirements of a Valid Lease

A valid lease must meet essentially the same requirements as any contract:

- Capacity to contract
- Legal objectives
- Offer and acceptance
- Consideration

B. Possession of Premises

The covenant of quiet enjoyment is a presumed promise by the lessor that the lessee may take possession of the premises and that the lessor will not interfere in the tenant's possession or use of the property.

C. Use of Premises

A lessor may restrict a lessee's use of the premises through provisions included in the lease.

D. Term of Lease

The period for which the lease will run should be stated precisely, including the beginning and ending dates.

E. Security Deposit

IN ILLINOIS . . . *landlords who receive security deposits on residential leases of units in properties containing five or more units may not withhold any part of a security deposit as compensation for property damage unless they give the tenant an itemized statement listing the alleged damage. This statement must be delivered within 30 days of date on which the premises are vacated, and copies of repair receipts must be furnished 30 days after the statement is delivered. If the statement or receipts are not furnished, the landlord must return the entire security deposit*

within 45 days of the premises being vacated. Any landlord who is found by a court to have failed to comply with these requirements, or who has done so in bad faith, must pay the tenant double the security deposit due plus court costs and attorney's fees.

Illinois lessees are entitled to receive annual interest on their security deposits. Landlords who receive security deposits on residential leases of units in properties of 25 or more units, or deposits held for over six months, are required to pay interest from the date of the deposit at a rate equal to the interest paid on a minimum deposit passbook savings account of the state's largest commercial bank located in Illinois. Any landlord who is found by a court to have willfully withheld interest on a tenant's security deposit must pay the tenant an amount equal to the security deposit plus the tenant's court costs and attorney's fees. Professional property managers must put security deposits in special escrow accounts.

F. Improvements

The tenant may make improvements with the landlord's permission. Any alterations become fixtures: the landlord's property.

- Trade fixtures remain the personal property of a commercial tenant and may be removed if the tenant restores the premises to its previous condition.

G. Accessibility

It is illegal to discriminate against prospective tenants on the basis of physical disability. Tenants with disabilities must be permitted to make reasonable modifications to a property at their own expense.

- The Americans with Disabilities Act (ADA) also applies to commercial, nonresidential property in which public goods or services are provided.

H. Maintenance of Premises

IN ILLINOIS . . . *a landlord must deliver and maintain any residential leasehold free from defects that would render the use of the dwelling unsafe or unsanitary and unfit for human occupancy. Nothing may be present on the premises that could seriously endanger the life, health or safety of the tenant. There are no precisely defined standards; each alleged breach is considered on a case-by-case basis.*

A tenant must give the landlord notice of the defect and reasonable time in which to cure it. As a remedy, the tenant may choose to move out, stay and repair the problem, or terminate the tenancy and claim constructive eviction. The tenant may sue for any damages resulting from the defective condition, measured by the decreased rental value of the premises due to the defect or by the reasonable cost incurred to

repair the deficiency. The tenant may also use the breach as a defense to a landlord's suit for possession.

I. Destruction of Premises

In leases involving agricultural land, when improvements are damaged or destroyed the tenant is obligated to pay rent to the end of the term. This ruling has been extended to include ground leases for land on which the tenant has constructed a building and leases that give possession of an entire building to the tenant.

- The lease contains the obligations for payment of rent by a tenant who leases only part of a building.

J. Assignment and Subleasing

- When a tenant transfers all his or her leasehold interests to another person, the lease has been assigned.
- When a tenant transfers less than all the leasehold interests by leasing them to a new tenant, he or she has subleased (or sublet) the property.
- Sublease or assignment does not necessarily relieve the original lessee of the obligation to pay rent.

K. Recording a Lease

Possession of leased premises is constructive notice of the lessee's interest. Anyone who inspects the property receives actual notice. Owners of commercial property often record leases.

IN ILLINOIS . . . *creditors of the property owner and purchasers who do not have actual notice of a leasehold interest are considered to have legal notice of a lease if the lease, or a memorandum of it, is recorded with the recorder or registrar of the county in which the property is located.*

L. Options

A lease may contain an option that grants the lessee the privilege of renewing the lease.

IV. Types of Leases

The manner in which rent is determined indicates the type of lease that exists.

A. Gross Lease

Tenant pays a fixed rental, and landlord pays all operating expenses.

B. Net Lease

Tenant pays all or some of the operating expenses in addition to the rent. A common variation is a triple net lease wherein the tenant pays a portion of taxes, insurance, and maintenance.

C. Percentage Lease

Rent is based on a base fixed rental fee plus a percentage of the gross income received by a tenant doing business on the leased property. This is a common type of retail business lease arrangement.

D. Other Types of Leases

1. Variable lease

- *Graduated lease:* Provides for specified rent increases at set dates.
- *Index lease:* Allows rent to be adjusted periodically based on changes in the consumer price index or some other indicator.

2. Ground lease

Usually involves separate ownership of the land and buildings. Historically, this type of lease was used in the gas station business.

3. Oil and gas lease

When an oil company leases land to explore for oil and gas, a special lease agreement must be negotiated.

4. Lease purchase

Part of the periodic rent is applied toward the purchase price of the property until it is reduced to an amount for which the tenant can obtain financing or purchase the property outright.

5. Sharecropping

- Tenant farmers provide the labor to produce the crop.

V. Discharge of Leases

A lease is discharged when the contract terminates: either when the parties have fully performed their obligations or agree to cancel the lease.

- A tenant who abandons leased property remains liable for the terms of the lease including rent.
- The lease does not terminate if the parties die or if the property is sold.
 - *Exceptions:* a lease from the owner of a *life estate* ends when the life tenant dies, and the death of either party terminates a *tenancy at will*.

- If leased real estate is sold or otherwise conveyed, the new landlord takes the property subject to the rights of the tenants.
— *Sale clause exception*: permits a new landlord to terminate existing leases.
- A tenancy may be terminated by operation of law: bankruptcy or condemnation

A. Breach of Lease

If a tenant defaults on the payment of rent, a landlord has two options:

1. **Serve the tenant with five days' written notice**; demanding payment of the delinquent rent within five days after the notice is received. If the tenant fails to pay the rent, the landlord may terminate the lease automatically and sue for possession without further notice. If the tenant pays the past-due rent, the lease continues in full force.
2. **Alternatively, (and in cases in which the tenant's breach is other than nonpayment of rent) the landlord may terminate the tenancy by serving the tenant with ten days' written notice**, including a demand for possession. After the ten-day period expires, the landlord may sue for possession without further notice, even if the default is cured. (However, if the default is only nonpayment of rent and the landlord accepts any payment, he or she has waived the right to proceed with a lawsuit.)
3. **Suit for possession—actual eviction**

IN ILLINOIS . . . *a landlord seeking actual eviction of a tenant must file an action called a Forcible Entry and Detainer Action. It can be used when a tenancy has expired by default, by its terms, by operation of law or by proper notice. The suit should be filed in the circuit court of the county in which the property is located. If the court rules in favor of the landlord, a judgment for possession (and money damages) will be entered, and the clerk of the court will issue an order of possession. The tenant must then leave peaceably, removing all his or her property from the premises. Traditionally, however, if a residential tenant personally appears in court and the landlord prevails, the court will delay issuing the order for a reasonable period of time, to allow the tenant to find alternative housing.*

When a tenant refuses to vacate peaceably after a judgment for possession has been entered, the landlord must deliver the order to the sheriff, who will forcibly evict the tenant. The landlord then has the right to reenter and regain possession of the property. Until a judgment for possession is issued, the landlord must be careful not to harass the tenant in any manner. Illinois landlords have no right to self-help: that is, they may not forcibly remove a tenant without following the proper legal procedures.

4. Tenants' remedies

If a landlord breaches any clause of a lease agreement, the tenant has the right to sue for damages.

- **Constructive eviction:** If the premises become unusable for the purpose stated in the lease, the tenant may have the right to abandon them.

VI. Civil Rights Laws

All persons must have access to housing of their choice without any differentiation in the terms and conditions because of their race, color, religion, national origin, sex, handicap, or familial status.

VII. Lead-Based Paint

Federal Lead Based Paint law requires potential users of property be given the right to test the property for lead-based paint problems. These buyers or tenants must received documents mandated by the law.

IN ILLINOIS . . . *the Illinois Lead Poisoning Prevention Act requires the owner of any residential building cited by the state as a lead paint hazard to give prospective tenants written notice of the danger unless the owners have a certificate of compliance. When the state issues a mitigation order to an owner of a building containing lead hazards, the owner has 90 days in which to eliminate the hazard in a manner prescribed by state law. Owners of residential rentals built before 1978 also must give tenants a brochure prepared by the Department of Public Health concerning lead paint.*

VIII. Regulation of the Rental Industry

A. Rental-Finding Services

IN ILLINOIS . . . *a rental-finding service is any business that finds, attempts to find or offers to find for any person for consideration a unit of rental real estate or a lessee for a unit of rental real estate not owned or leased by the business. Any person or business entity that operates a rental-finding service must obtain a real estate license and comply with all provisions of the Real Estate License Act.*

- *General-circulation newspapers that advertise rental property and listing contracts between owners or lessors of real estate and registrants are exempt from this requirement.*
- *Rental finding services are required to enter into written contracts with the parties. The contract must make specific*

disclosures about services to be provided, charges and refunds.

- *A prospective tenant must be given specific information about each property.*
- *Information about the rental property cannot more than two days old*

B. Leasing Agents

IN ILLINOIS . . . *the Illinois Real Estate License Act provides for a special, limited-scope license for individuals who wish to engage solely in activities related only to the leasing of residential real property.*

C. Referral Fees

IN ILLINOIS . . . *the Illinois Real Estate License Act allows landlords to pay a referral fee to tenants of no more than \$1,000 or one month's rent, whichever is less, for any 12-month period.*

Discussion Questions

1. Why do you think tenant's rights have been emphasized so much in recent years?
2. Are there any property owner or landlord organizations in your area? Are there any tenant associations in your area? What do such organizations try to accomplish? Are they successful in your area? Are they valuable?

Classroom Exercises

1. Have your students who are or were tenants relate some of the positive and some of the negative experiences they had while they were renting or leasing. After they've finished telling their "horror stories," ask them how their perspective might have been different if they had been in their landlord's position.
2. Have your students who are or were landlords relate some of the positive and some of the negative experiences they had while in that position. Ask them about how their perspective might have been different if they had been in a tenant's position.