

Real estate leasing, either for the purpose of performing business activities or for personal purposes of regulating the housing issue, is one of the few areas of legal transactions that is not taken seriously enough and is often not given enough attention in detailed contractual regulation of landlord-tenant relations.

Having in mind the importance of the two above-mentioned purposes of the lease, in the first place is the stability of business, which is conditioned, among other things, by legal certainty regarding the lease of real estate and a “firm” contract. In the second case when it comes to taking over real estate to meet personal, living needs, it's about legal security of your “rooftop”. It is evident in both cases that we are working with particularly sensitive interests that need to be well protected.

There are risks, not small without any doubt, on the side of the lessor too, so it is in his best interest for the lease to be contractually regulated in a comprehensive manner. However, that this is not a frequent case is also shown by a large number of litigation procedures in which do not only require unpaid rents, but also violation of other rights and compensation for damage caused by the action or inaction of one or the other party, which are a consequence of arbitrary interpretation of the lease, in the absence of contractual provisions.

The flows were further diverted in that direction by the insufficiently developed awareness of the obligation to pay taxes when it comes to the lease of real estate. To this end, many are willing to question their own legal certainty and expose themselves to the possibility of arbitrary interpretation of the leasing relationship, which inevitably leads to lengthy litigation and much higher costs and losses from those that should represent “savings” by avoiding paying taxes.

Contractual provisions

Law on Obligations (“Official Gazette of the SFRY”, No. 29/78, 39/85, 45/89 – decision of the USJ and 57/89, “Official Gazette of the FRY”, No. 31/93, “Official Gazette SCG “, No. 1/2003 – Constitutional Charter and” Official Gazette of RS “, No. 18/2020 hereinafter: “**Law**”) in Articles 569-599 primarily regulates the matter of leasing in a framework for regulation, with certain norms of an imperative character.

This guide will not primarily deal with the essential elements of the real estate lease agreement, which represent the real estate itself, the amount of rent and the duration of the contract, without which the contract cannot be valid, nor the legal provisions

themselves, but will indicate the relations that the parties most often assume and consider as implicit, and which as such, most often represent sources of misunderstandings and opposite interpretations.

- Purpose of the lease

In addition to the subject of the lease, it is very important to define the purpose of the lease, the purpose for which a certain real estate is leased. The definition of purpose will determine the very essence of the contractual relationship and provide guidelines for further defining the contractual relationship in terms of the use of real estate, as well as determining responsibility for a particular fact or omission, and especially for the use of leases contrary to purpose.

- Communication

Although in the technique of drafting a contract, the method of communication between the contracting parties is defined only at the very end of the contract, from the point of view of the sensitivity of the lease relationship, defining communications, in writing, by e-mail, is essential in order to prevent interpretation of other people's words, attitudes and intentions, as well as wrong memories, and at the same time provides security for both parties.

- Entry into force and handover

When defining the conclusion of the contract, it is more than desirable at the very beginning, in addition to stating the real estate, to accurately define other related parts, inventory, furniture, appliances and ascertain their condition and correctness at the time of entry. An attachment to the contract can be compiled about the above, so that a long list would not burden the text of the contract itself, and it can also be stated in the record. The precision in this part of the contract completely excludes the possibility of misinterpretation of legal norms.

- Evidence of rent paid

It is not necessary to burden the existing already cumbersome documentation with receipts on the received or paid amount of rent. It is more than enough to agree that the payment of rent is made by payment through a bank account in a precise time, so there will always be a trace and the possibility of direct insight into performed obligations under the lease for both parties.

- Evidence of costs paid

After all other real estate costs, amounts, deadlines, length and responsibility for payment are precisely defined, the contract will also define what will be considered evidence of payment and within what deadline will this evidence be submitted.

- Deadlines

Although deadlines are defined for each circumstance of conduct, at this place we would specifically point out to their importance. Without clear deadlines for the fulfillment of any obligation (and not only those that the contracting parties consider characteristic), a contractual relationship cannot be considered to be regulated in a clear and thorough manner, and as such, contrary to its purpose, is a fertile ground for misunderstandings.

- Modifications and maintenance

Modifications to the real estate of the company by any parties must be provided for in the contract in such a way. In addition to the contracting of the possibility of modification, as already pointed out, the methods of notification, deadlines, obligations and responsibilities must be contracted.

On the other hand, the Law itself prescribes that the lessor is obliged to maintain the real estate in good condition during the lease and therefore perform the necessary repairs on it. He is obliged to reimburse the purchase costs incurred by this effect, which he would be obliged to make.

The costs of minor repairs caused by the regular use of things, as well as the costs of the same use, are borne by the tenant. The lessee is obliged to inform the lessor about the use of the repair.

- Guarantees and insurance

In addition to the standard deposit, real estate lease agreements also contract all other collateral that can guarantee the good performance of the contract. It is important, as in other places, to agree in detail on all application parameters.

- Consequences of non-compliance

For everything agreed, it is necessary to agree and the appropriate consequences of non-compliance, otherwise, it will not be too useful from the contract itself.

The real estate lease agreement must be drawn up in a clear, simple but comprehensive manner, respecting the specific facts of the mutual agreement, the purpose of the lease, the conditions and requirements of the contracting party, so that the contracting parties do not at one time obligations interpreted by the court.