

Things to consider when leasing

When entering into a lease agreement as a tenant for commercial or residential property, there are a few important points that need to be considered and should be discussed with your lawyer or advisor.

This should be done in order to understand the legal specifics of leases under Thai law and ultimately protect your interests.

Typically, your landlord or his agent will provide you with a standardized lease agreement; one that has already been used for leases in the past.

This is not likely to be a tailored agreement drafted specifically for the lease of the property you have chosen, be it land, a shop house, office space, an apartment or residential building.

In addition, such agreements are usually drafted in favor of the landlord and may include provisions which provide harsh consequences in case the lessee is in default, sub-leases the property, or makes changes to the leased property without the landlord's consent.

Diligent review of all relevant legal documentation in connection with the lease and good negotiation skills are required.

The duration of the lease is

one of the most important points to discuss with your landlord.

Under Thai law, the maximum duration for a commercial lease is 50 years and 30 years for a residential property.

Every lease longer than three years must be agreed upon in writing and recorded with the relevant land department in order to ensure its enforceability.

With the exception of long-term residential (land) leases, which usually have a duration of 30 years plus options for renewal, landlords and tenants may wish to negotiate on the duration of a lease.

From a landlord's perspective, it seems to be preferable to agree on a lease period of less than three years, as such a lease period does not need to be registered with the land department and eliminates registration fees.

Tenants may prefer a long-term lease, particularly if they wish to spend a considerable amount of money on improving the premises, for which they will receive no compensation from the landlord when the lease expires.

As a compromise, the parties could agree upon lease renewal options that can be exercised by the tenant whenever the lease expires.

However, it needs to be

understood that the agreed renewal option is a contractual right which is only legally binding to the landlord with whom the tenant entered into a lease agreement with.

This means that the agreed right of renewal can not be enforced against a third party in the event of the property being transferred to a new owner.

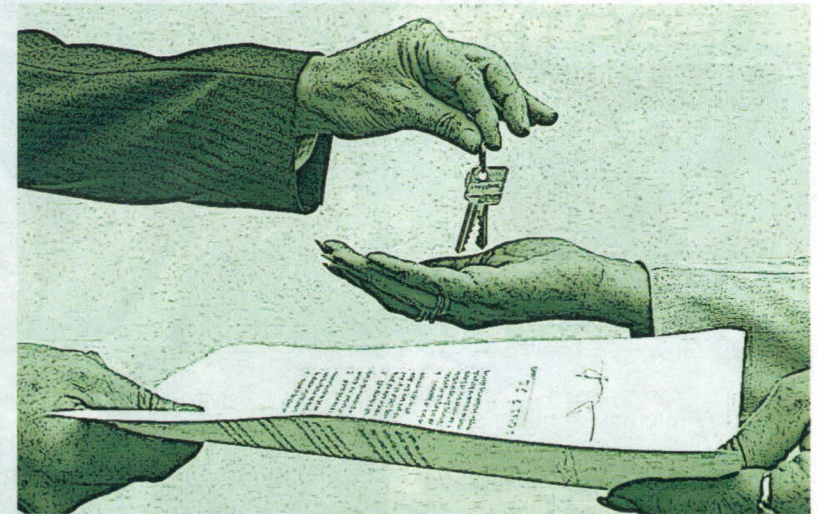
Another important point that should be discussed with your landlord is the security deposit usually required when entering into a lease agreement.

Lease agreements typically include provisions that describe the exact amount and for what reasons the landlord has the right to keep (part of) the deposit, for example, stipulating that the security deposit can be used by a landlord to compensate for damages to the property caused by the tenant.

The deposit can even be forfeited if the tenant breaches the agreement, not only, but also in regard to, payment of the rent followed by termination of the lease by the landlord.

A total loss seems to conflict with the spirit of a security deposit, as it should (only) provide security to a landlord with regard to damages caused to the property by the tenant.

The maintenance of the leased property should also be



Scrutinize your rental agreement carefully before signing it, especially the duration of the contract. Many contracts are not specifically tailored to the property you plan to rent, which could cause problems when it's time to move out.

discussed with your landlord.

Usually lease agreements include provisions through which the landlord passes all maintenance responsibilities to the tenant, whether they be aesthetic repairs or major defects.

A fair compromise seems to be to agree with the landlord that he or she is responsible for the maintenance and liable for repairs with the exception of minor defects and aesthetic repairs which shall remain the duty of the tenant.

There are other important points that should also be carefully scrutinized and discussed with your

lawyer or advisor before entering into a lease.

These include moving out procedures upon expiry or termination of a lease, and default provisions and the subsequent consequences in the event of a breach of contract by either party.

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