**Basic Renting guidelines**

There are basically two types of rental contracts in India: lease agreements with a minimum of 12 months, which are covered by rent control laws, and leave and license agreements of up to 11 months, which are not.

Lease Agreements covered by rent control laws have set rents determined by local state governments. Prices are generally determined by the cost of building construction and the land´s market price. Pricing is based on costs of the year of construction. Therefore, older properties are always cheaper than newer properties. If an apartment is part of rent controlled housing, its price can only be increased very little each year.

When signing a lease agreement for a minimum of twelve months, ownership of the rental property is transferred to the tenant for an indefinite period of time. This causes problems for landlords as there have been many cases of tenants refusing to move out of a flat in India. Court cases can easily take up to ten to twenty years to resolve.

For this reason, most landlords prefer leave and license agreements. They only guarantee tenants the right to live in the rental object for eleven months. Periodic renewal is possible. These 11-month contracts circumvent rent control laws, giving more rights to landlords.

**Key players**

**Definitions**

1. **Housing Society**means a society the object of which is to provide its members with open plots for housing, dwelling houses or flats or if open Plots, the dwelling houses or flats are already acquired, to provide it's members common amenities and services.
2. **Member** means a person joining in an application for the registration of a co-operative Society which is subsequently registered or a person duly admitted to membership of a Society after registration and includes a nominal, associate or sympathiser member.
3. **Associate member** means a member who jointly holds a share of a society with others, but whose name does not stand first in the Share Certificate.
4. **Nominal member** means a member admitted to membership as such after registration in accordance with the bye-laws. It is noted that a nominal member is treated as a member of the co-operative society as held in K.K.ADHIKAR vs. T.G.KULKARNI and others 1980 C.T.J. 241.
5. **Society**means a co-operative society registered, or deemed to be registered, under this Act. It is to be noted that a proposed society cannot be covered under the definition as held in CNJ 196 (Bom.) 1984 in the case of Beed Dist. Central Co-op and M.P. and D. Federation vs. State of Maharashtra.

**Period of lease agreement**

The Maharashtra Rent Control Act, 1999’ says there is no stipulation as to whether ‘Leave and License’ agreement should be in multiples of 11 or 12 months, and there is no stipulation as to total time period. However ‘Leave and Licence’ agreement generally does not exceed three years. But the new rule effective from May 7, 2005 states that you can do a ‘Leave & License’ agreement now for a period up to five years and in multiples of 12 months each. Owners may refuse to renew for various reasons since they may be uncomfortable with their lessee.

An instrument creating a lease of immovable property for a term of one year and above was required compulsorily to be registered by virtue of provisions of Section 17(d) of the Indian Registration Act. Therefore, such ‘Leave & License’ Agreements were being executed for a period of 11 months with the dual intention, namely, to avoid the stamping of such an agreement and its registration and secondly to avoid interpreting such ‘Leave & License’ Agreement as a lease of the immovable property to avoid protection against vacation of the occupier, as per the provisions of the said Bombay Rent Act.

Also, another reason for making an agreement on an 11-month basis by the property owner is to shy away from the ‘Rent Control Law’ provision of giving six months notice at the end of those 12 months. If the agreement is for 11 months then even a minimum period of notice, say, seven days, would suffice.

While big corporates may prefer a three-five year lease, residence owners usually prefer the relative safety of a leave-and-license agreement, which ensures periodic renewal of the terms. The eleven-month agreement is usually popular as these pre-empt the rent control laws, which apply after 12 months. Rent control laws, as said earlier, weigh in favor of tenants

**Termination of lease agreement**

Unless the Lessee has violated terms of Leave and License agreement, owner cannot re-claim the flat mid-way. A lease can be terminated midway by the owner, only if there are violations related to agreement. These could be exit clauses. The common violations that could lead to re-claim are (a) Renovating flat without permission of Licensor (b) Sub-letting (c) Illegal or immoral activities in flat (d) Some anti-national activities carried out in flat and so on. All this can be avoided by proper screening before one shortlist’s a Lessee. The renter should check the background of a Lessee such as marital status, previous track record, verification of professional status, details about permanent address etc. Also, it is compulsory to register the agreement with the local police station.

**Rules regarding how much rent can be charged**

The rent can sometimes be higher or lower than the (Rent) Ready Reckoner depending upon ‘Hard Furnishings’, ‘Soft Furnishings’ and other amenities provided by the Lessor. A person renting a flat can pay monthly rent or the entire sum at one time. Many Lessors prefer post-dated cheques in advance for the whole year. The owner can increase the rent mid-way only if it is mentioned in the terms of agreement. However, in the absence of this (increase in rent) clause, it is understood that rent is fixed for a period of the lease.

Property, where rent is over Rs. 3,500 is subject to the Transfer of Property Act (TPA) and not the rent control laws of the various states and metros. The TPA comes under the civil court while the rent laws are heard by the Rent Controller at the district level. If you want to evict errant tenants the TPA is much better as it has a broad scope for eviction unlike the latter which sets out barely 12 causes.  
  
There is a silver lining yet for harried landlords. If passed, Delhi's pending Rent Control Bill would enable house owners to remove tenants who have stayed for over 10 years without paying market rates. Section 13A2 was introduced in the Bombay Rent Act a couple of years ago which allows the landlord to double the rent if the tenant does not vacate or is ruining the property. Its advocates also say that if the Urban Land Ceiling Regulation Act is abolished, landlords would be on firmer ground

**What should one inspect in premises before taking it on rent?**

A: To prevent the possibility of misunderstanding, before signing any Leave and License agreement, a potential Lessee should read the terms and conditions thoroughly and seek clarification where required. To help keep the relationship cordial, before hiring the premises, the following should be investigated:

·         Foundation, basement and visible structures

·         Water supply, plumbing systems, drainage condition, sanitary and CP fittings

·         Walls, ceilings, paintwork, flooring, type of roofing, etc.

·         Continuous electricity supply, electrical systems, functioning of light fittings etc

·         Quality of doors and windows, latches, locks etc.

·         Furniture, fixtures and fittings

·         Whether any security systems such as CCTV have been installed for safety

**Who has to pay for a problem in the flat like a leakage?**

A: It is understood that possession has to be given in ‘Vacant and Peaceful condition’. Generally, the owner has to pay for the leakages if the leakage is from outside the flat. However if the terms of agreement between the Lessee and Lessor state otherwise, then the problem in the flat is to be executed on the basis of these terms and conditions.

**How does 'Lease' differ from 'Leave and License?'**

A: U/s 105 of 'The Transfer of Property Act, 1882,' Lease is defined as a transfer of the right to enjoy the concerned property for a pre-defined time period or in perpetuity. The Lessor (owner of the property) gives the Lessee (the one leasing the property) such consideration periodically, usually at the beginning or end of a lease agreement. U/s 52 of 'The Indian Easements Act, 1882', ‘Leave and License’ does not allow any interest in the premises on the licensee's part. It merely gives the licensee the right to use and occupy the premises for a limited duration. A lease deed needs to be stamped and registered. The amount payable as stamp duty towards the lease deeds is generally more than that payable towards the Leave and License's. For a period exceeding three years, the stamp duty is same for both agreements. A Leave and License arrangement ensures a regular periodic renewal of the terms, which as a rule effectively safeguards the interest of most homeowners as opposed to leasing out a property.