Chapter 12 Summary

Leases

A lease is both an instrument of conveyance and a contract between principal parties to uphold certain covenants and obligations. The legal essence of a valid lease is that it conveys an exclusive right to use and occupy a property for a limited period of time in exchange for rent and the return of the property after the lease term is over.

In a lease arrangement, the owner is the landlord, or lessor, and the renter is the tenant, or lessee.

There are four basic types of leasehold estates:

1. Estate for Years
2. Estate from Period to Period (Periodic estate)
3. Estate at Will
4. Estate at Sufferance

The covenants (agreements or promises) in the lease are very important. The following eight covenants are essential in a New York lease:

1. Capacity to contract
2. Demising clause
3. Description of the premises
4. Clear statement of term
5. Specification of rent and how it is to be paid
6. In writing
7. Signatures
8. Delivery

In New York, rent regulation is administered by the New York State Division of Housing and Community Renewal (DHCR). DHCR administers two programs:

1. Rent control
2. Rent Stabilization
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There are several laws that govern rent regulations, including the Emergency Tenants Protection Act of 1974 (ETPA).

Security deposits must be kept by the owner in an interest-bearing account in a New York State bank. The owner must notify the tenant of the name and address of the bank and pay the tenant the full annual interest, less 1% of the security deposit per year for the owner's administrative costs.

All New York leases are considered to have an implied warranty of habitability. This means that the landlord is guaranteeing that the leased property is fit to be inhabited by humans and is safe and sanitary.

In New York, a lease may not limit the occupancy of a unit to the tenant named on the lease and his or her immediate family. The unit may be shared with one additional occupant and that person's dependent children.

A sublease is the transfer by a tenant of a portion of the leasehold interest to another party.

An assignment of the lease is a transfer of the entire leasehold interest by a tenant to a third party.

A lease may terminate for any of the following causes:

- Term expiration
- Notice
- Voluntary agreement
- Property destruction
- Condemnation
- Foreclosure
- Breach of contract
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A **gross lease** requires the landlord to pay the property's operating expenses, including utilities, repairs, and maintenance, while the tenant pays only rent.

In a **net lease**, the tenant pays not only the rent for occupancy, but also pays maintenance and operating expenses such as taxes, insurance, utilities and repairs.

In a **graduated lease**, the rent payments start at a fixed amount but increase as the lease term matures.

A **ground lease**, or **land lease**, concerns the land portion of a real property. The owner grants the tenant a leasehold interest in the land only, in exchange for rent.

A **percentage lease** is a lease whose rental is based on a percentage of the monthly or annual gross sales made on the site.

A **proprietary lease** conveys a leasehold interest to an owner of a cooperative.

An **index lease** provides for the adjustment of rent according to changes in a price index.