Chapter 11 Summary

Section 5 Contracts Used in Real Estate: Leases

Texas Law of Contracts

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.

Several of the laws that apply to the sale of property also apply to leasing property. These include:

- Statute of frauds
- Agency disclosure
- Lead Based Paint
- Sex Offender Laws
- Fair Housing Laws
- American Disabilities Act

There are four basic types of leasehold estates:

1. **Estate for Years** has a definite beginning and ending date, does not require notice to terminate, and does not have automatic renewal.
2. **Estate from Period to Period (Periodic estate)** has no definite end date, typically run month-to-month, and requires proper notice to terminate.
3. **Estate at Will** has no time limit. The possession is given with permission, but there is no agreement about the rent. Either party can terminate at will, with proper notice.
4. **Estate at Sufferance** is created when a tenant remains on the property without the owner's consent after the lease terminates. A tenant who doesn't leave when the lease expires is called a holdover tenant.

The Law of Contracts governs the making, interpretation, and enforcement of leases. Consequently, the requirements for making a valid lease are the same as for making a valid contract.

The covenants (agreements or promises) in the lease are very important and include:

- Capacity to contract
- Demising clause
- Description of the premises
- Clear statement of term
- Specification of rent and how it is to be paid
- In writing
- Signatures
- Delivery
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There are many different types of leases.

- 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**, 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.

A lease may terminate for any of the following causes.

- Term expiration
- Notice
- Voluntary agreement
- Property destruction
- Condemnation
- Foreclosure
- Breach of contract

Tenant default occurs most commonly from failure to pay rent or maintain the premises. If a tenant is in default, the landlord may file a **suit for possession**, also called a **suit for eviction**.

The most common form of landlord default is failure to provide services and maintain the property condition. In an instance where the landlord's negligence or disruptive action has rendered the property unlivable, a tenant may vacate the premises and declare that the lease is cancelled by default. This action, called **constructive eviction**, can nullify the tenant's lease obligations if the claim succeeds in court. In order to obtain a constructive eviction judgment, the tenant **must vacate** the premises.

If the landlord sells the property, the lease remains in effect and the new landlord is bound by its terms. If the landlord dies, the landlord’s estate **remains bound to provide occupancy despite the landlord's death**.

If the tenant dies, **the lease does not terminate**. It becomes part of the tenant's estate, which is bound by the terms of the lease.