

Legislation on commercial leases

compiled and updated by

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Civil Code

Civil Code of 21 March 1804, as amended.

(Excerpts)

TITRE VIII. – The contract of lease

Chapter I. – General provisions

Art. 1708. There are two kinds of contract of lease:

- the lease of things; and
- the lease of work.

Art. 1709. The lease of things is a contract by which one party binds himself to provide the enjoyment of a thing to the other for a certain time, in return for a certain price that this other party obliges himself to pay the former.

Art. 1710. The lease of work is a contract whereby one of the parties binds himself to do a certain thing for the other for a price they agreed upon.

Art. 1711. These two kinds of lease are further subdivided into several particular types:

The lease of houses and of movables is called a lease for rent; that of rural property, a rural lease; that of work or of service, a hire; that of animals whose profits are divided between the owner and the one to whom he entrusts them, a livestock lease;

Estimates, an agreement, or a fixed price for the undertaking of a work for a determined price, are also leases, when the material is furnished by the one for whom the work is done.

These last three types are governed by special rules.

Art. 1712. Leases of national property, of the property of municipalities, and of public institutions are subject to special rules.

Chapter II. – Of leases of things

Art. 1713. One may lease all kinds of things, both movables and immovables.

Section I. – Rules common to the lease of houses and of rural property

Art. 1714. One may lease either in writing or verbally.

Art. 1715. If a lease made without writing has not yet been carried out even in part, and one of the parties denies its existence, proof may not be adduced through witnesses, however low the price may be, and even if it is alleged that a deposit was paid.

The oath can only be deferred to the party who denies the lease.

Art. 1716. When there is a dispute as to the price of a verbal lease whose performance has begun, and no receipt has been given, the owner shall be believed upon his oath, unless the lessee chooses to request an appraisal by experts; in which case, the costs of the appraisal are charged to him, if the appraisal exceeds the price that he has declared.

Art. 1717. A lessee has the right to sub-lease or even to assign his lease to another person, unless that right has been forbidden to him.

It may be forbidden in whole or in part.

Such a clause is always strictly construed.

Art. 1718. The provisions of Article 595, paragraphs 2 and 3, relating to leases made by usufructuaries, apply to leases made by a tutor without authorization of the family council.

Art. 1719. The lessor is bound, by the nature of the contract, and without need of any particular stipulation:

- 1° To deliver the thing leased to the lessee;
- 2° To maintain the thing in a state that permits the use for which it was leased;
- 3° To secure to the lessee a peaceful enjoyment for the duration of the lease;

Art. 1720. The lessor is bound to deliver the thing in good repair of all kinds.

He must, during the term of the lease, make all the repairs which may become necessary, other than those the lessee is required to make.

Art. 1721. A warranty is owed the tenant against all vices or defects of the thing leased that prevent its use, even if the lessor did not know of them at the time of the lease.

If a loss of any nature is suffered by the tenant as a consequence of these vices and defects, the lessor must indemnify him.

Art. 1722. If, during the term of the lease, the thing leased is wholly destroyed by a fortuitous event, the lease is terminated by operation of law; if it is destroyed only in part, the lessee may, depending on the circumstances, demand either a reduction in the price, or the very cancellation of the lease. In either case, no indemnification is owed.

Art. 1723. A lessor may not, during the term of the lease, change the condition of the thing leased.

Art. 1724. If, during the lease, the thing leased needs urgent repairs that cannot be postponed until the end of the lease, the lessee

must allow the repairs, whatever inconvenience they cause him and although he is deprived of a part of the thing leased while they are being made.

But if these repairs last more than forty days, the rent shall be reduced in proportion to the time and to the part of the thing leased of which he has been deprived.

If the repairs are of such a nature that they render uninhabitable what is required for the lodging of the lessee and his family, he may have the lease terminated.

Art. 1725. A lessor is not bound to warrant the lessee against violent disturbance that third persons cause to his enjoyment, when such third persons do not claim any right to the thing leased; but the lessee may file any appropriate action against them in his own name.

Art. 1726. If, on the contrary, the lessee or the rural lessee has been disturbed in his enjoyment in consequence of an action relating to the ownership of the thing, he is entitled to a proportionate reduction of the rent of the lease or agricultural lease, provided that a notice of the disturbance and of the impediment have been given to the owner.

Art. 1727. If those who have committed the acts of violence claim to have some right on the thing leased, or if the lessee himself is summoned in court to be ordered to relinquish all or part of the thing leased, or to allow the exercise of some servitude, he must call the lessor in warranty and shall be dismissed from the suit, if he so demands, by naming the lessor on whose behalf he possesses.

Art. 1728. A lessee is bound to two principal obligations:

- 1° To make use of the thing leased as a prudent administrator and according to the purpose intended by the lease, or according to the purpose presumed under the circumstances, if there is no agreement to that effect;
- 2° To pay the price of the lease at the times agreed upon.

Art. 1729. If the lessee does not make use of the thing leased as a prudent administrator

or if he uses the thing leased for any purpose other than the one for which it was intended, or if some damage may result to the lessor, the latter may, according to the circumstances, have the lease terminated.

Art. 1730. If an inventory of the condition of the premises leased has been made between the lessor and the lessee, the latter must return the thing in the same state, according to that inventory, except for what has been destroyed or has been deteriorated by old age or by an unforeseeable and irresistible event.

Art. 1731. If no detailed inventory of the premises was made, the lessee is presumed to have received the premises in a good state of repairs that a lessee is bound to make, and must return the premises in the same state, unless there is proof to the contrary.

Art. 1732. He is answerable for the deteriorations or losses occurring during his enjoyment, unless he proves that they did not occur through any fault of his.

Art. 1733. He is answerable in case of fire, unless he proves that it is not through his fault that the fire broke out.

Art. 1734. If there are several lessees, they are all liable for a fire in proportion to the rental value of the part of the building they occupy;

Those of the lessees who prove that the fire could not have started in their accommodation will not be liable whereas the remaining ones will be liable according to the preceding paragraph.

If it is proved that the fire started in the accommodation of one of them, that lessee alone is liable within the same limits and without prejudice that the liability he would have incurred in case of negligence.

If the owner himself inhabits part of the rented buildings, he will be considered as if he was a tenant for the purpose of applying the provisions of this article. However if it is unknown where the fire started, the owner will have an action against the lessees only if he can

prove that the fire did not start in the part of the building occupied by him.

Art. 1735. A lessee is responsible for the deteriorations and losses that occur on account of the act of persons of his household or of his sub-lessees.

Art. 1736. If a lease had been entered into without a writing, one of the parties may give the other a notice of termination only by observing the periods of time fixed by the usage of the place.

The notice period for terminating a residential lease contract is three months, unless otherwise provided in a written contract which provides for a notice period that is longer than three months.

Art. 1737. A lease ceases as a matter of law at the expiration of the term fixed, when the lease has been made in writing, without it being necessary to give a notice of termination.

Art. 1738. If, at the expiration of a written lease, the lessee remains on the premises and is allowed to continue in possession, a new lease is thereby created and its effect is regulated by the Code article governing leases made without a writing.

Art. 1739. Where a notice of termination has been issued, the lessee, although he has continued his enjoyment, may not claim the benefit of a tacit reconduction.

Art. 1740. In the instances mentioned in the two preceding Articles, the security given for the lease does not extend to the obligations resulting from the extension of the lease..

Art. 1741. The contract of lease is terminated by the destruction of the thing leased and by the failure either of the lessor or of the lessee to perform their obligations.

Art. 1742. The contract of lease is not terminated by the death of the lessor nor by the death of the lessee.

Art. 1743. If the lessor sells the thing leased, the buyer may not evict the rural lessee or the lessee who has a lease in authentic form

or whose date is certain, unless he has reserved that right in the contract of lease.

Art. 1744. If it had been agreed at the time of the lease that in the event of a sale the buyer could evict the rural lessee or the lessee and if no stipulation had been agreed as to damages, the lessor is bound to indemnify the rural lessee or the lessee in the following manner.

Art. 1745. In the case of a lease of a house, an apartment, or a shop, the lessor shall pay damages to the evicted tenant in an amount equal to the price of the lease, during that period of time which, according to the usage in the locality, is granted between the notice of termination and the departure.

Art. 1746. In case of a lease of rural property, the indemnity which the lessor must pay the farmer shall be one-third of the price of the lease for the whole time that still remains to run on the lease.

Art. 1747. The indemnity shall be fixed by experts when manufactures, factories, or other

establishments that require large advances of funds are concerned.

Art. 1748. The buyer who wishes to make use of the option reserved by the contract of lease to evict the lessee in case of a sale is also bound to inform him within the period of time which is customary in the place for notices of termination.

He must also inform the tenant of rural property at least one year in advance.

Art. 1749. Lessees may not be evicted unless the damages referred to above have been paid to them by the lessor or, if he does not pay them, by the new buyer.

Art. 1750. If the lease has not been made by authentic act or if it lacks a date certain, the buyer is not liable to pay any damages.

Art. 1751. Buyers with a reverse repurchase agreement may not expel the lessee until the moment where they become absolute owners though the expiry of the time limit set out for the reverse repurchase.

Section II. – Special provisions applicable to residential leases

Art. 1752. The lessee who does not furnish the house with sufficient furniture may be evicted, unless he gives sufficient security to answer for the rent.

Art. 1753. The sub-lessee is liable to the owner only up to the amount of the price of his sub-lease that he may owe at the time of the seizure, without that sub-lessee being able to set off payments he has made in advance.

The payments made by a sub-lessee either under a stipulation contained in his lease, or as a consequence of the usage of the place, are not deemed to have been made in advance

Art. 1754. The repairs which are incumbent upon the lessee or those of minor maintenance for which a lessee is also responsible, unless otherwise stipulated, are those which are considered as such by the usage of the place and, among others, the repairs to be made: to fireplaces, back-plates, mantelpieces and mantelshelves, to the roughcasting of the lower parts of walls of apartments and other places of accommodation, up to one meter in height, to the stones and tiles of the bedrooms, when only a few are broken, to window panes, unless they have been broken by hail or other extraordinary accidents and by force majeure, for which a lessee may not be held responsible, to doors, casements, boards for partitioning or closing shops, hinges, bolts, and locks.

Art. 1755. None of the repairs considered as incumbent upon a lessee may be charged to lessees if they are occasioned by old age or force majeure.

Art. 1756. The cleaning of wells and cess-pools shall be the responsibility of the lessor, unless there is a clause to the contrary.

Art. 1757. The lease of the furniture provided to furnish a whole house, a whole main part of a building, a shop, or all other apartments is supposed to be made for the ordinary

duration of leases of houses, main parts of buildings, shops, or other apartments, according to the usage of the locality.

Art. 1758. The lease of a an accommodation shall be considered to have been made for an unspecified duration if the written contract does not specify for what length of time the parties intended to be bound.

Art. 1759. If the lessee of a house or an apartment continues his enjoyment after the expiration of the written lease, without objection on the part of the lessor, he shall be considered as occupying them under the same conditions, for the term fixed by the usage of the locality, and he may not leave nor be evicted except after a notice of termination issued within the time required by the usage of the locality.

Art. 1760. In case of termination owing to the fault of the lessee, the latter is bound to pay the price of the rent during the time necessary to lease again, to another, without prejudice to the damages that may have resulted from an abusive use.

Art. 1761. The lessor cannot cancel the lease, even if he declares that he wishes to occupy the house leased himself, unless there was a stipulation to the contrary.

Art. 1762. If it was agreed in the contract of lease made for a determined duration or for an unspecified duration, that the lessor might come and occupy the house, he is bound to give a notice of termination in advance, either at the times fixed by the lease contract or according to the notice period set out in article 1736.

Art. 1762-2. Express termination clauses remain subject to assessment by the competent judge.

Section III. – Special provisions applicable to commercial leases¹

Art. 1762-3. Any lease of a building intended with the purpose of exercising a commercial, industrial or craft activity is a commercial lease.

Art. 1762-4. The commercial lease agreement can have a definite or indefinite term.

If no term is provided in the lease agreement, it is concluded for an unlimited period of time.

The lease agreement binds a new buyer or any new holder of a property right on the building.

The provisions of the present section do not apply to lease agreements with a term of less or equal to one year.

Art. 1762-5. (1) Any rent supplement paid to the lessor or the intermediary as of a result of the conclusion of the lease agreement is null and void.²

(2) Any commitment of the lessee towards the lessor to use a specific intermediary for the subletting or the assignment of the lease is null and void.

(3) The parties may agree that the lessee shall provide a lease guarantee, which may not exceed six months of rent in order to warrant the payment of the rent or of any other duties arising under the lease agreement. The lessor may not refuse a lease guarantee in the form of a first demand bank guarantee or the subscription of any insurance or other guarantee to cover at least six months of rent

Art. 1762-6. (1) Any clause prohibiting the assignment of a lease or the subletting of a building or part of a building that is subject of the lease pursuant to article 1762-3 is null and void if the assignment or the subletting is made together with the assignment of the goodwill, subject to the continuation of an identical activity.

(2) Any full or partial assignment or subletting shall be notified, together with a full copy of the assignment or sublease agreement, to the lessor.

(3) Within thirty days of the notification of the proposed assignment or subletting, the lessor may refuse his approval for just causes and, within eight days of such refusal, the lessee may proceed before the justice of peace.

The assignor remains bound, as a joint and several surety of the assignee or sub-lessee, for any duties arising from the lease.

However, if the lessor reserved part of the building for the purpose of his personal residence or the residence of his family, the prohibition to assign the lease or to sublease remains valid.

(4) Except in the case of subletting where specific investments relating to the activity of the sub-lessee are made by the lessee, the rents paid to the lessee by the sub-lessee may not be higher than the rents paid by the lessee to the lessor.³

Art. 1762-7. (1) The notice period for the termination of the lease agreement subject to the present section may not be less than six months.

Termination is notified by registered letter with acknowledgment of receipt.

(2) Without prejudice to Article 1739, any lease agreement that will come to a term, for whatever reason, is tacitly renewed for an indefinite period of time. The lessee shall renew or adapt the agreed lease guarantee according to this renewal so that the lessor will have the guarantee until the end of the lease.

Art. 1762-8 In case of death of a lessor who is a trader, industrial, craftsman or farmer, the lease agreement will continue with the successor provided that the successor continues the business, industrial, craft or farming activity

¹ As amended by the law of 3 February 2018 on commercial leases, in force from 1 March 2018.

² Article 1762-5, paragraph 1, of the Civil Code is not applicable to agreements providing for an entry into possession of the premises for the lessee before 1 March 2018 (Art. 3, paragraph 3, of the law of 3 February 2018 on commercial leases).

³ Article 1762-6, paragraph 4, of the Civil Code will enter into force on 1 March 2019 (Art. 3, paragraph 4, of the law of 3 February 2018 on commercial leases).

and that such successor is related to the family of the deceased up to the fifth degree included or else with the spouse or partner of the latter.

Art. 1762-9 The lessor may request a decision from the justice of peace authorizing the forced eviction of the lessee after the expiry of the notification period. The justice of peace may order, upon request of the lessee or sub-lessee, who is a trader or farmer and is sentenced to eviction, to suspend the enforcement of the decision.

The suspension, which may be granted one time only, cannot exceed nine months and is only granted if all of the following conditions are met:

1. all rents and anticipated payments for charges that are due were paid on the day the application is made; and,
2. the suspension is granted in order to allow the applicant to find another building to continue his activity and fulfil his duties under the employment contract with his employees.

The decision authorising the suspension of the forced eviction will not be subject to opposition or appeal.

Art. 1762-10 The lessee may – as well as the sub-lessee, provided the lease agreement does not prohibit subletting – request the renewal of the lease agreement at its term. Any clause to the contrary in the written lease agreement refusing this option to the lessee or the sub-lessee is null and void.

The request shall be sent to the lessor by registered letter with acknowledgment of receipt at the address provided in the lease agreement or else to the latter's domicile or registered office.

In order to be admissible, it must be submitted at least six months before the term of the lease agreement. The lessor shall communicate his reply within three months after the reception.

In the event there are several lessors, the request shall be sent to each of them unless otherwise provided in the lease agreement.

Art. 1762-11 The lessor may terminate the lease agreement with immediate effect in case

the lessee is in breach of his contractual obligations.

The lessor can terminate the lease with previous notification as provided Article 1762-7 or refuse the renewal thereof:

1. for the personal use by the lessor or his descendants up to the 1st degree;
2. in case no lease will be granted anymore for the purpose of identical activities;
3. in case of reconstruction or transformation of the rented building.

Art. 1762-12 (1) The lessor may still, after a period of at least nine years of occupation of the leased premises, terminate the lease or refuse the renewal thereof without having to provide any justification:

1. if the lessor pays, before the end of the lease, an eviction indemnity to the lessee; or
2. if a third party pays the eviction indemnity before the end of the lease.

(2) In the absence of a clause in the lease agreement to determine the amount of the eviction indemnity, the parties may submit a request to the justice of peace who will then determine the eviction indemnity on the basis of the market value of the goodwill for the given activity.

Art. 1762-13 The lessee whose lease has been in existence for at least eighteen years has a pre-emption right on the leased premises unless they are sold by public auction or transferred to a member of the family of the lessor up to the third degree inclusive or are subject to a transfer free of payment.

The lessor will send an offer to the lessee by registered letter. In this offer the lessor shall inform the lessee that he has the right to make a counter-offer. The lessee has one month to exercise his right to submit a counter-offer. In absence thereof, it is deemed that he has refused the offer. If the lessee has applied for a loan with a financial institution established in the European Union, this term can be extended by one month. The rented premises can be sold to a third party only at a higher price than the one offered by the lessee.

The pre-emption right may only be exercised if the lessee has rented the entire building or if the rented premises are subject to co-ownership.

In the event the rented premises are sold to a third-party buyer despite the pre-emption right of the lessee, the latter can claim damages from the lessor which may not be less than the amount of the rents for one year.

Law of 3 February 2018 concerning commercial leases

Law of 3 February 2018 on commercial leases and modifying certain provisions of the Civil Code (J.O. n° 110 of 6 February 2018).

(Excerpts)

Art. 3. (1) The provisions of the present law are applicable to existing agreements as of its entry into force.

(2) Notwithstanding any clause to the contrary, the lessee having submitted a request for commercial reprieve of having been granted commercial reprieve is entitled to apply for the renewal of his lease based on the provisions of the new article 1762-10 of the civil code, even if he is outside the six-month term provided before the expiry of the lease agreement to do so. The application shall be submitted directly to the judge in charge of the request for commercial reprieve or by way of a new request.

The lessees for which the remaining term of the lease is less than six months at the time the present law enters into force, may apply for renewal if they fulfil the conditions provided in article 1762-10 of the Civil Code.

(3) Article 1762-5, paragraph 1, of the Civil Code is not applicable to agreements providing for an entry into possession of the premises for the lessee before the entry in to force of the law.

(4) Article 1762-6, paragraph 4, of the Civil Code will enter into force twelve months after the entry into force of the present law.

Law of 21 September 2006 on leases for residential use

Law of 21 September 2006 on the lease for residential use and amending some provisions of the Civil code (Official journal A n° 175 of 2 October 2006, p. 3150), amended by the laws of 22 October 2008 (Official journal A n° 159 of 27 October 2008, p. 2230), of 5 August 2015 (Official journal A n° 169 of 1 September 2015, p. 3958), of 2 September 2015 (Official journal A n° 174 of 9 September 2015, p. 4148), of 23 December 2016 (Official journal A. n° 274 of 27 December 2016, p. 5139) and of 2 August 2017 (J.O. n° A 734 of 16 August 2017).

(Excerpts)

Chapter V. – Dispute resolution

Art. 19. The justice of peace is competent, even if the title is contested, to decide on any disputes between lessors and tenants with regard to the existence and the implementation of building leases.

The competent justice of peace is the one of the location of the accommodation that is the subject of the disputed lease.

Art. 20. The request submitted to the justice of peace under article 3, 3° of the New Code of civil procedure will be in form of a simple application to be deposited with the office of the justice of peace in as many copies as parties involved in the dispute.

The application will provide the name, first name, profession and domicile of the parties. It will include a summary of the means in support

of the request and specify the object of the request.

The date of the deposit shall be recorded by the court writer on an unstamped paper register to be kept in the court's office. The justice of peace will counter-sign and initial this register. The court writer will also record in this register the date of the registered letters under the present law.

Art. 21. The court writer will convene the parties by registered letter with acknowledgment of receipt. He will append a copy of the application for each defendant. The letter shall provide the name, first name, profession and domicile of the applicant, the object of the application, the day and time of the hearing before the justice of peace at least eight days in advance. The convening notices will furthermore contain in order to be valid the information required under 80 of the New code of civil procedure.

Art. 22. Regarding the examination and the decision of such cases, the ordinary procedure for cases before the justice of peace shall apply if not derogated by the provisions of the present law.

If an investigation or expertise is required, the court writer will summon the witnesses and experts by registered letter with acknowledgment of receipt. The letter shall specify the object of the investigation or the expertise.

Within fifteen days of the sentence pronouncement, the court writer will send a copy of the sentence on plain paper to the parties by registered letter.

Art. 23. In the event one of the parties does not appear before court either in person or through a representative, the justice of peace shall rule in accordance with the provisions of articles 74 to 89 of the New Code of civil proceedings. The absent party may submit an opposition with the court's office within fifteen days of the notification under article 22, paragraph 3.

In this case the convening notice shall be sent as provided under article 21.

Art. 24. In an order the justice of peace may take any accessory measures and more specifically determine the temporary rent. Articles 15, 16 and 17 of the New code of civil procedure shall apply.

Art. 25. The appeal shall be brought before the district court. It shall be submitted in order to be admissible within forty days as of the notification of the sentence if it is contradictory and, if the sentence was rendered in absence, within forty days as of the day the opposition is no longer admissible. The ordinary procedure in commercial matters shall apply for the submission of the appeal as well as for the examination and the decision on the case.