



# The New Civil Code for Everyone

## The Lease

### Relevant provisions

Title IX „Various special contracts”, Chapter V „The Lease”, the articles 1777 – 1823 contain general provisions and articles 1824 – 1835 contain particular rules in matters of housing leases

### Notion

Art. 1.777 defines the lease as the contract by which one party, called the **lessor**, undertakes to provide for the other party, called the **lessee**, the use of a certain asset for a certain period, in exchange for a price, called **rent**.

**The Rent** may consist in a sum of **money** or in any other **assets or provided services**.

### **Types of lease - Art. 1778**

The **Tenancy** is the type of lease that has as its object immovable assets and chattels, other than agricultural assets.

The **Agricultural lease** is that type of lease that concerns agricultural assets.

### Features of the Lease

- a synallagmatic (bilateral) contract – it is concluded between the two parties of the contract: the lessor and the lessee.
- an onerous contract– each party intends to get an advantage: the lessor to get the rent, the lessee to use the asset.
- a consensual contract – it is concluded by the simple agreement of the parties: art. 1781 states that the Lease is considered as concluded as soon as the parties have agreed on the asset and the price
- a designated contract– it is designated in the Civil Code
- a negotiated contract – the parties may negotiate all the clauses, as opposed to the membership or mandatory contracts, where one of the parties is not allowed to change the clauses drafted by the other party.

### Duration of the Lease

The maximum duration of a lease is of 49 years. If the parties stipulate a longer term, this is diminished by law to 49 years.

If the parties did not mention in the contract the duration of the lease, without wanting to contract on an undetermined period, in default of practices, the lease is considered as concluded:

- a) for one year, in case of unfurnished dwellings or premises destined for the exertion of activities by a professional;
- b) for the duration corresponding to the time unit for which the rent was calculated, in case of chattels or of furnished rooms or flats;
- c) on the duration of the lease of the assets, in case of chattels made available to the lessee for use of building.

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### Duties of the lessor

- to deliver the leased asset to the lessee. The Lessor is obliged to deliver the asset together with all its accessories in good order for its use.
- to maintain the asset in good order, condition and repair on all the duration of the lease. The lessor is obliged to make all repairs necessary to maintain the asset in good working order on all the duration of the lease,
- to provide to the lessee the quiet enjoyment and peaceful possession of the asset on all the duration of the lease. The Lessor must refrain from any act that might prevent, diminish or impede such a use. Should a third party pretend any right on the leased asset, the lessor must hold the lessee harmless even in the absence of a factual disturbance
- guarantee against any vices of the asset which prevent or reduce its use, even if not known at the contract conclusion and regardless whether they existed before or appeared during the lease.

### Duties of the lessee

- to take charge of the leased asset;
- to pay the rent to the amount and at the deadline established by contract. In the absence of a contrary stipulation, the lessee must pay the rent at the established deadlines according to the practices. If there are no practices and in absence of a contrary stipulation, the rent is paid in advance for all the duration of the contract, if it does not exceed one month; in the first workday of each month, if the duration of the lease exceeds a month, but is less than one year; in the first workday of each term, if the duration of the lease is of at least one year.
- to use the asset with care. If the lessee modifies the asset or changes its destination or if he/she uses it in a manner damaging to the lessor, the latter may request damages and, as the case may be, the termination of the contract.
- to allow the lessor to examine the asset at reasonable time intervals in relation with the nature and destination of the asset, as well as by those intending to buy it or who, at the end of the contract, wish to lease it, without however causing him/herself an unjustified encumbrance in the use enjoyment of the asset.
- to return the asset at the end of the lease, due to any reason,.

### Novelty Elements

The Civil Code contains a multitude of new provisions in this matter, some of them taking over solutions from the judicial practice, others giving details to old texts. Considering the effects, the following provisions are very important:

- **Art. 1798** - Leases concluded by deed under private signature which have been recorded with tax authorities, as well as those concluded in signed and authentic form are **enforceable titles for the rent payment** at the deadlines and in the ways as established in the contract or, in their absence, by law.
- **Art. 1809 paragraph (2) and (3)** - Regarding the **obligation to return the leased asset**, the fixed-term contract and established by signed and authentic deed and the contract concluded on a determined period by a deed under private signature and recorded with the competent tax authority represent, under the law, **an enforceable title at the expiry of the deadline**.
- **Art. 1811 - Opposability of the lease against the acquirer**. If the leased asset is alienated, the right of the lessee is opposable to the acquirer, as follows:
  - a) in the case of buildings recorded in the Land Register, if the lease has been inscribed in the Land Register;
  - b) in the case of buildings not recorded in the Land Register, if the certified date of lease is prior to the certified date of the alienation;
  - c) in case of chattels subject to publicity formalities, if the lessee has fulfilled these formalities;
  - d) in case of the other chattels, if on the of the alienation the asset is being used by the lessee.

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