

## **LEASES**

A Lease is a Conveyance or grant of the possession of land to last for a term of years or other fixed period in consideration of a rent reserved. The lessee covenants to perform certain obligations such as pay rent and keep the premises in good repair and the lessor covenants to give the lessee undisturbed possession.

Freehold land under the operation of the Registration of Titles Act may be leased for any term **NOT BEING LESS THAN ONE YEAR** by the execution of a lease thereof in the form in the Sixth Schedule and the registration of such lease under the Act. A lease for a period less than one year is therefore not registrable, see Section 94.

## **OUTSTANDING ENCUMBRANCES**

The applicant must recite in the instrument any outstanding mortgages or encumbrances which affect the certificate of title. The lease will be subject to the interests registered in priority. If there is an outstanding mortgage or other encumbrance registered against the Certificate of Title, the consent of the mortgagee in writing must be obtained prior to the lease being registered if the lease is to bind mortgagee. Any Lease can be registered in duplicate. The mortgagee's consent must be unqualified. Otherwise the mortgagee in exercise of his power of sale may sell the land freed of the lease. Registered land shall be deemed to be subject to the interests of any tenant of the land for a term not exceeding three years notwithstanding the same may not be specific specially notified as an incumbrance in the Certificate of Title.

## **FORM OF LEASE**

1. A proper description of the property according to the certificate(s) of title must be supplied.
2. The name of the registered owner in the certificate of title should also be consistent with the name of the lessor in the Lease. If there is any discrepancy confirmation of identity and that they are one and the same person will be required.
3. The name and postal address of the lessee is required.
4. The lease must state the term for which the land is being leased which is greater than ONE (1) year. The term must have a definite commencement date and be for a specified number of years or have an ascertainable termination date. A lease less than one year will not be registered such a lease may be protected by a caveat. The lease instrument must not be conditional on acts precedent to its coming into operation. When presented for registration the instrument must on the face of it be demonstrably UNCONDITIONAL.
5. The lease must be in the form of the Sixth Schedule in the Act. It is important to its validity that the instrument uses the words of assurance recited in the form.

## **LAND BEING LEASED**

Where a lease refers to a part only of the land owned by the owner of the freehold set out in the Certificate of Title, APPROVAL FOR SUBDIVISION UNDER THE LOCAL IMPROVEMENTS ACT must be obtained. Failure to do so renders the lease void unless and until the approval is granted.

Additionally where the land to be leased is part of a parcel owned by the registered owner of the freehold exceeding one hundred acres, the Consent of the Land Development and Utilization Commission must be obtained. Otherwise the lease is of no effect and unenforceable by the Lessee.

## **COVENANTS**

Covenants/Conditions set out in the Seventh Schedule of the Act may be adapted. Any conditions contained therein may be added to or altered. The Registration of Titles Act, Section 95 and 96, provides for certain implied covenants by the lessee and implied powers in the lessor. These implied covenants and powers may be modified or discharged.

## **OPTION TO RENEW**

An option to renew a lease for a further period is not a lease. An option is what it says it is: agreements between the parties that the lessor will on the exercise of the option execute a lease for the new term. The agreement creates an equitable lease

when the option is exercised. The lessee on the basis of this equity may apply to the Court for the specific performance of the agreement.

Where a lease is registered and the term of the lease expires, the entry will be deleted from the face of the Certificate and not carried forward to any new Certificate. If the lease document contains an agreement between the parties for the exercise of any option then the parties must present a renewed lease for registration.

### **TRANSFER OF A LEASE**

A lessee may transfer, mortgage or grant an under lease in the forms set out in the schedule to the Act. The transferee is liable for the same requirements and liabilities as if he were the former proprietor. An underlease is registered by entering on the head lease lodged with the Registrar a Memorandum of the underlease.

### **SURRENDER OF A LEASE**

The duplicate certificate of title is required as well as the duplicate lease. The lease is surrendered by the word "Surrendered" with the date endorsed upon the lease lodged with the Registrar or on the duplicate (if any) and signed by the Lessee or transferee or lessor and transferee of the lease and attested by a witness. If the lease was made subject to a mortgage or charge consent of the mortgagee is required. A memorandum recording the date of such surrender shall be made in the Register Book and duplicate Certificate of Title.

A lease may also be partially surrendered.

### **UNDER-LEASES**

An under lease whereby a lessee leases a further leasehold estate out of the term of his lease can be registered. (see transfer of a lease above.)

### **GENERAL NOTES**

The application form is readily available on our website [www.nla.gov.jm](http://www.nla.gov.jm) or the intranet. The Lease should be assessed for stamp duty by the Stamp Commissioner prior to being lodged at our office. The duplicate Certificate of Title is required and all parties (present registered proprietors and parties to the lease) must execute the Lease. For short form of covenants with their implications see the seventh schedule of the Registration of Titles Act.