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## Understanding Due Diligence In Real Estate In India

*Due diligence is critical before entering into a lease and license agreement as it helps you confirm the identity of the licensor, determine the property's legal status, assess the condition of the property, and review the terms of the agreement say Krrishan Singhania, Managing Partner and Founder of K. Singhania & Co. and Preksha Shah, Associate K. Singhania & Co.*

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Due diligence is a comprehensive and systematic investigation or audit of a person, company, or asset before entering into a business transaction or investment. It involves conducting a thorough review of all relevant financial, legal and operational information and documents, to identify any potential risks, liabilities or issues that may affect the transaction. Due diligence is an important step in mitigating risks and making informed decisions before entering into a business deal or investment.

### Why is it important to conduct due diligence with respect to leave and license agreements?

After selecting a property that you want to occupy on leave and license basis, it is essential to conduct due diligence for the following reasons:

1. To verify the identity of the licensor: Due diligence will help you initially to verify the ownership of the property, confirm the identity of the licensor and ensure that the licensor is truly in fact the rightful owner of the property and in the condition to grant the license. This is particularly important if you are entering into a license agreement with an individual or an entity that you are unfamiliar with.
2. To determine the property's legal status: Properties can broadly be categorised into two, viz. Commercial Property and Residential Property. While conducting our due diligence it is important that we check whether the property can be used for the purpose for which we want to enter into the Leave and License Agreement. Usually residential properties cannot be used for commercial purposes and vice versa depending on the rules of the society. This involves a thorough reading of all property, title/sale deeds documents This involves verifying and checking of relevant legal documents to ensure that the property is not subject to any legal disputes or claims.
3. To review the terms of the agreement: It is important to conduct a thorough review of the agreement to ensure that all terms and conditions are clearly understood and comply with applicable laws.

### How to conduct due diligence?

Before entering into a leave and license agreement for a property in India, there are several steps that you should take to ensure that the property is free from any encumbrances and that there are no legal or other issues that may affect your agreement. Here are some steps to consider:

1. **Verify the legal status of the property:** You should verify the legal status of the property by reviewing legal documents such as title deeds, land registry records, Electricity Bill, Municipal tax records and other legal documents to ensure that the property is not subject to any legal disputes, encumbrances, or restrictions that may affect your license agreement.
2. **Check for any pending legal issues:** Check if there are any pending legal disputes such as pending litigation, claims of other heirs and so on.
3. **Check if all taxes and other charges are paid:** It is important to verify that all taxes and charges are paid by the licensor until the date of the leave and license agreement. In the event, the licensor has not paid the taxes or charges it may affect the peaceful possession of the licensee.
4. **Check if the property has necessary approvals and permits:** Ensure that the property has all the necessary approvals and permits from relevant authorities for carrying out its intended use, such as trade license, occupancy certificate, or building plan approvals.
5. **Physically inspect the property:** Conduct a physical inspection of the property to verify its condition, and compliance with applicable laws and to assess its suitability for your intended use. You should also check for any damages or defects that may need to be repaired before the agreement is signed.
6. **Review the terms of the agreement:** Review the license agreement carefully to ensure that all terms and conditions are understood and compliant with the law. The agreement should clearly specify the responsibilities of both the licensor and licensee, rent and deposit details, increment details, tenure, delay in rent, furniture and appliances, lock-in period, and any other relevant terms.

### Properties to avoid while entering into a leave and licence agreement

There are certain types of properties that may be avoided for a leave and license agreement. Here are a few examples of properties that should be avoided:

1. Properties with legal disputes: Properties that are subject to legal disputes, such as litigation or pending court cases, should be avoided as these disputes can cause uncertainties in the future.
2. Properties without necessary approvals and permits: Properties without necessary approvals and permits from relevant authorities, should be avoided as this can lead to legal issues in the future and affect the peaceful occupancy of the licensee.
3. Properties with disputed titles: Properties with disputed titles or several claims should be avoided as this can cause legal problems and put your license agreement at risk.

By avoiding these types of properties and conducting due diligence, you can minimize the potential for legal issues, financial loss, and safety risks for yourself for the unhindered occupancy of the property.

### Risks to consider while entering into a leave and license agreement in respect of a mortgaged property

When entering into a leave and license agreement for a property that is mortgaged, there are several risks to consider:

1. **Default by the mortgagor:** If the mortgagor (property owner) defaults on their mortgage payments, the mortgagee (the lender) may take possession of the property. In such a scenario, the licensee's rights to use / occupy the property may be affected, and they may be forced to vacate the property.
2. **Mortgagee's consent:** Before entering into a leave and license agreement for a mortgaged property, the licensee should ensure that the mortgagee has given their consent to the agreement.
3. **Title of the property:** The licensee should ensure that the property's title is clear and free of any encumbrances, other than the mortgage. If there are any other claims or disputes on the title, the licensee's rights to the property may be impacted.

### Conclusion

Due diligence is critical before entering into a leave and license agreement as it helps you confirm the identity of the licensor, determine the property's legal status, assess the condition of the property, and review the terms of the agreement. By taking these actions, you can steer clear of future legal disputes as well as monetary losses. Doing simple and effective due diligence can help you make an informed decision. To minimize these risks, it is essential to conduct due diligence on the property and review all relevant legal documents, including the mortgage deed. The licensee should also ensure that the agreement clearly outlines the rights of the parties, and that all financial obligations are fulfilled. In case of any uncertainties or concerns, it is advisable to seek legal advice before entering into a leave and license agreement for a property.

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