

Lease v. License – What’s the Difference?

Posted on January 25th, 2016 | Authors : Timothy P. McKeown

In my travels over the years, I have come across instances where business people have confused the distinction between a lease and a license. The distinction is important because the rights and obligations of the parties can be significantly different depending upon what the true relationship is determined to be.

Initially, simply labeling an Agreement a “License Agreement” or “Lease” does not make it so. Our courts will look to the terms of the Agreement to determine whether it is a License or a Lease. While the distinction is sometimes difficult to discern, the consequences of getting it wrong can be significant. For example, if an owner simply locks out an entity it believes to be a licensee but that is actually a tenant, the tenant has potential claims against the owner for any number of causes of action, including, but not limited to, wrongful eviction, trespass, and breach of contract.

So, what will a court look to in order to ferret out the nature of the relationship between the parties? Generally, a lease exists where the owner agrees to turn over exclusive possession of the property to another for some period of time. A license, on the other hand, is an agreement that gives the licensee permission to use the land only at the owner’s discretion. A license is freely revocable, and does not provide for protection for the licensee against interference by the licensor.

Does the document give the non-owner any rights in the premises, such as the right to perform repair work or to be responsible for security? Must the owner give notice before terminating the agreement? Does the document contain a “cure period” in the event of a default by the non-owing party? Is there a holdover provision in the document? If the answer to these questions is “yes,” then it is unlikely that the arrangement between the parties is a true license, even if the document is titled as such, and is probably a lease.

If you have any questions about this post or any real estate matters, please contact me at tpmckeown@nmmlaw.com.

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What Is The Difference Between a Lease and a License?



Incline Law Group

By [Christopher Coble, Esq. \(https://www.findlaw.com/company/our-team.html\)](https://www.findlaw.com/company/our-team.html), on March 27, 2015
12:01 PM

What is the difference between a lease and a license?

They may sound like the same thing, and you may have heard the terms used interchangeably. However, a lease and a license are two separate legal concepts that offer different rights and duties.

A lease is an agreement between a landlord and a tenant that gives the tenant an exclusive interest in a property. A license is permission from the owner to a licensee to do something

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on the owner's property. As with all things law related, the distinction is never so simple.

To determine the difference between a license and a lease, we look at:

Difference Between Lease and Licence: Everything You Need to Know

The difference between lease and license is the difference between two distinct legal concepts pertaining to an individual's duties and rights in a contract. 3 min read

- [1. Lease and License Overview](#)
- [2. Property Control with Leases and Licenses](#)
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Lease and License Overview

The difference between lease and license is the difference between two distinct legal concepts pertaining to an individual's duties and rights in a contract. A lease is a contract between a tenant and a landlord that provides the tenant with exclusive interest in the property. A license, on the other hand, is when the owner gives permission to a licensee to conduct an action on the owner's property. The main difference then is that leases give an individual the right to control property, while licenses only give an individual the right to act on it.

Property Control with Leases and Licenses

There are a number of major ways that leases differ from licenses, but the primary one pertains to the matter of control. Leases, as agreements, are contracts which exercise much less control than licenses over the party that is making the payments. If you are entering into a contract where you essentially have freedom to do what you will on a piece of property, then you are probably entering into a lease.

Leases create interest in the property involved. So long as the lease is in term, the party leasing the property has some right to ownership of the property, including the right to keep any person, including the landlord, off the property (although the landlord may reserve the right to enter the property during normal daytime hours for certain, agreed-upon purposes, such as conducting repairs). Due to these ownership rights, leases can be transferred to another party; in the case of apartments, this is called subletting.

Licenses, on the other hand, allow the party accepting payment to have significantly more control over how their property is used. Pertaining to the example above, licenses cannot be transferred to a third party because the nature of the agreement is that the licensing party controls certain aspects of your conduct on the property; allowing another party to use the property instead of yourself would be a violation of that agreement. Because of this, license agreements are primarily used for shorter-term agreements involving storage, office, and small-scale retail spaces.

Contract Terms with Leases and Licenses

To understand if you are dealing with a license or a lease, how the contract is presented is another aspect that may determine the issue. A lease usually requires an oral or written agreement between the two parties involved. Such an agreement should include the following information to be complete:

1. A description of the bounds and extent of the property being leased.

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Recognizing the Difference between a Lease and a License in Connecticut

Hinckley Allen Retail Newsletter

By: Noble F. Allen

February 27, 2014

Although the terms are often used interchangeably, a lease and a license are distinctly different under Connecticut law. In its simplest form, a lease is a contract that conveys an exclusive possessory leasehold interest in property; whereas, a license is a mere privilege to act on another's property and does not confer or produce a possessory interest in the property. A license is generally revocable at any time by the licensor, hence the term "revocable license" is sometimes used. The ultimate distinguishing characteristic of a lease is that the landlord or lessor surrenders exclusive possession of the premises to the tenant or lessee for a specific term or period.

By its definition, a license does not "run with the land" and therefore will not bind a subsequent purchaser. It is intended to be exercised only in the specific manner for which consent was given. To that end, a license cannot be assigned because as a matter of law, the privilege does not extend beyond the initial licensee. As a result, a property owner who acquires a property – through an assignment of lease in connection with a sale – is not bound to recognize or assume a license agreement that may have existed prior to its ownership.

Nonetheless, there is the following caveat: A license agreement that smells, feels, or tastes like a lease will be construed as a lease. Conversely, a document titled "lease agreement" but containing all the characteristics and attributes of a license agreement will be construed as a license under Connecticut law. Courts have consistently held that just because the agreement is captioned as a "lease" or a "license" will not necessarily make it so. Thus, Connecticut courts will focus on the character of the agreement itself and the intent of the parties, rather than the phraseology or nomenclature contained in the document, to determine

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Is it a Lease or a License?

By Stephen D. Richman (<https://www.kjk.com/professionals/stephen-richman/>)



It's a license, it's a lease, it's a license and a lease. Actually, while Faye Dunaway's character in the movie *Chinatown* could be both mother and sister to "Katherine", a transferred right regarding real estate cannot be both a license and a lease.

So, is a kiosk at a shopping mall, for example, a license, or a lease? How about the use of a building roof for a billboard; license or lease? Does it really matter what you call it? Is this the case of a distinction without a difference?

Although the terms are often used interchangeably, in Ohio (and most other jurisdictions) there is a distinct difference. As aptly summarized by the Eighth District of Ohio Court of Appeals in *Bewigged By Suzzi, Inc., Appellant, v. Atlantic Dept. Stores, Inc., et al., Appellees, 1976 Ohio App. LEXIS 5803*, "The major difference between a license and a lease is a license to do an act upon land involves exclusive occupation of the land by the licensee [only] so far as is necessary to do the act and no further, whereas a lease gives the right of possession of the land and the exclusive occupation of it for all [emphasis provided] purposes not prohibited by its terms. A further distinguishing feature is the difference in the expected duration of a tenancy as opposed to a license. In dealing with a leasehold estate, the estate will be initially terminable only upon the expiration of a specific period of time, unless the parties specifically make an agreement to the contrary. The rule

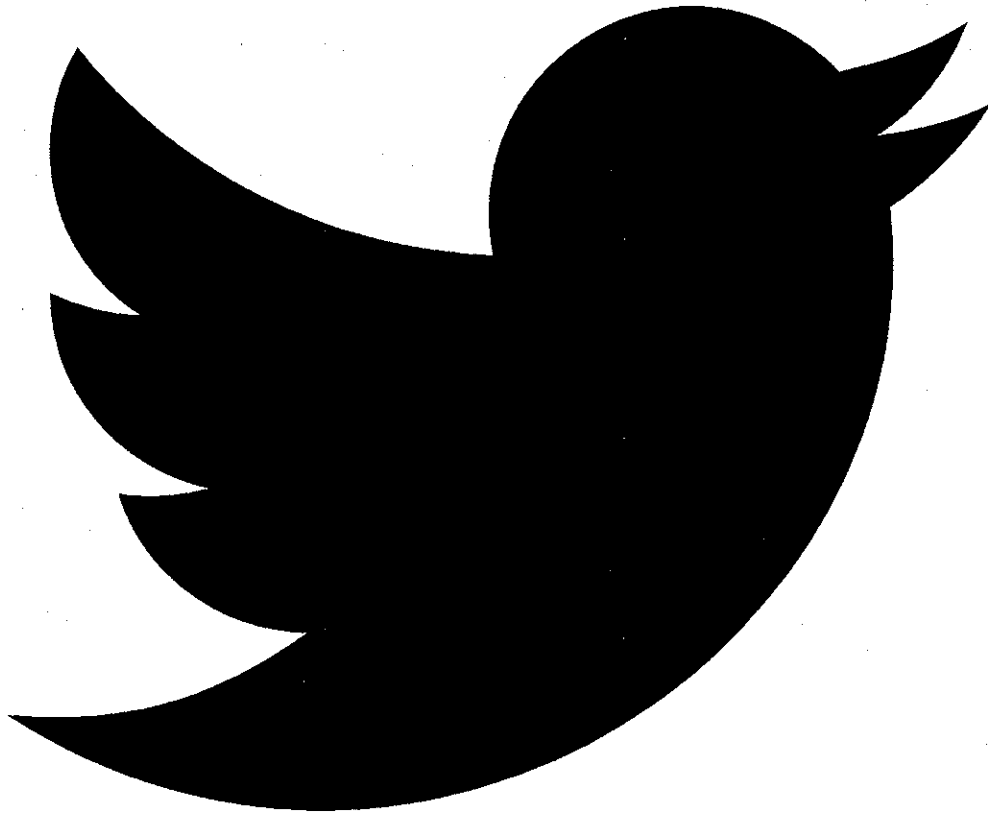
The court of appeals in *Bewigged* easily came to the conclusion that a holdover situation was not in effect because the agreement in question was not a lease, but a license. The court reasoned that while the agreement provided certain square footage requirements for the wig departments, it did not specify specific, exclusive areas of the stores to be used for the sale of wigs. Also, the wig company had other rights with respect to the space, other than to sell wigs. The court also found it easy to refuse to create a "holdover license" rule. The court explained that the very nature of a license is such that it is opposite to that of a lease with regard to term. A license is terminable at will unless the parties specifically provide to the contrary. Leases, on the other hand are typically for fixed terms.

As the aforesaid cases demonstrate, it matters greatly, whether or not a right with regard to property is designated a license or a lease. As Ms. Schloss unfortunately discovered, an aggrieved party will not be able to enforce, in a court of law, an unwritten commercial lease. Verbal licenses, on the other hand are enforceable. As the owner of the wig company in "*Bewigged*" learned (the hard way), there is no "holdover license law". Only a lease holdover can result in a new, periodic tenancy.

So what is the moral of this story? Just say "license" when you want a license" and say "lease" when you want a lease? If only it were that easy. As the United States District Court for the Eastern District of California aptly explained in *United States of America v. Southern California Edison Company*, 2004 U.S. Dist. LEXIS 4545, "Even where a writing exists which categorizes the agreement concerning the property as either a lease, easement or license, that categorization will not control the determination, although the courts will consider the title and language of the document used in deciding the nature of the interest at stake. Generally, courts look to the intent of the parties concerning the property to determine whether the agreement should be interpreted to create a lease, easement or license."

In synthesizing Ohio cases, the "the key fact in determining whether an agreement constitutes a license or a lease is whether the lessee/licensee has exclusive possession and the power to exclude the lessor/licensor from a specific area." (*Schloss, HN4*). This rule seems to have been correctly applied in the above-mentioned cases. The owner of the wig company in *Bewigged* had a license because she only had the right to a wig department at several stores, not the wig department at specific locations within such stores. The right to use the kiosk in *Schloss* was held to be a lease because the kiosk was assigned a specific space, and the landlord could not do anything else with that space. Of course, a kiosk on a different set of facts might be held to be a license vs. a lease. Such was the case with a recent decision in Connecticut.

If the above sounds convoluted, without a "bright line test" to work in all situations, it is. Even the United States District Court in the *Southern California Edison Company* case admitted that "Distinguishing between a lease, an easement and a license concerning the



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130: What is the difference between a lease and a licence?

A lease is the grant of legal interest in land which gives exclusive possession for a fixed period of time. A licence is merely a personal permission granting licence to occupy or do something on someone else's property.

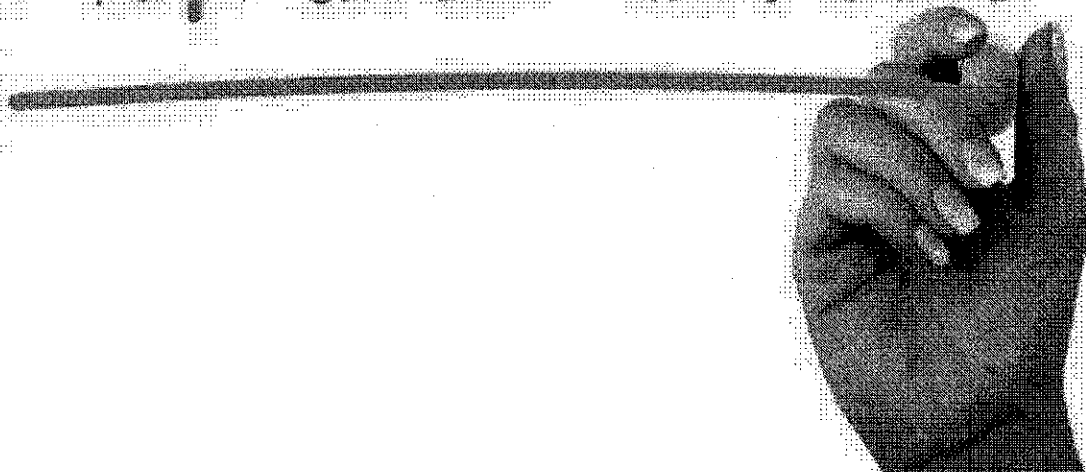
Case law has previously highlighted the differences between a lease and licence, in particular that a lease may give security of tenure to a business tenant whereas a licence does not. The law also confirms that even if an agreement purports to call itself a 'licence', it does not mean that it will actually be a licence. This has been important in two recent residential cases covering licences and leases.

Property guardians – licensee or tenant?

Agreements: The Lease Agreement vs. The License Agreement

By **Guelph Local** - January 15, 2019

AGREEMENTS



Although on the surface an Agreement to Lease Space or a License to Use Space may appear similar, the rights embedded in the documents are inherently different.

In the absence of a document setting out the parties' intentions, if the relationship deteriorates it can be difficult to determine whether the agreement constitutes a lease or a license.

From either party's perspective, License Agreements are generally personal and specific to both the current operator and property owner. By legal definition, a **lease** is a bundle of rights given from the Landlord to the Tenant, which are embedded in the land. In comparison, a license merely conveys a privilege to use the property, making this act lawful.

Here are three key differences that are worth noting before entering into an Agreement to Lease Space or a License to Use Space:

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1. Unlike with a Lease, it is impossible to transfer interest in a pure license agreement.
2. Unlike a Lease, a License can easily be revoked, leaving you compromised.
3. A Lease grants the Tenant the *exclusiveright* to use a property, while a License grants the Licensee a *non-exclusiveright* to use the property as its legal ownership remains with the original licensor.

Happy renting!

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