



Annotation of Lease Agreements

Due to skyrocketing real estate prices in Turkey, many local and foreign investors prefer leasing as opposed to buying properties nowadays. Whether for tourism, commercial or industrial purposes, lease engagements have become more important for both foreign and local investors. From a commercial view, investors wish to secure the premises they are leasing for a long-term (e.g. five years) considering the high investment amount they spend for decoration and operation of the leased premises. However, due to the high demand for real estate, landlords frequently end up selling their real properties to third parties when approached with a reasonable offer. In such cases, a third party becomes the owner of the relevant real property and the tenants face the risk of eviction by the new owner under certain circumstances defined by law, despite having a valid lease agreement.

According to Article 310 of the Turkish Code of Obligations (the “TCO”), if a real property that is occupied by a tenant via a lease agreement is sold to a third party, the new owner of the premises automatically becomes a party to the lease agreement. Therefore, the new owner must comply with the terms and conditions of the lease agreement that would enable the tenant to occupy the premises for the term specified under the lease agreement.

However, under Article 351 of the TCO, the new owner has a right to file a lawsuit for the eviction of the tenant after six months following the acquisition of the real property, if it is able to prove to the court that it needs to use the premises for its own residential purposes or commercial activities.¹ If the court is convinced that the owner needs the premises, the new owner will be able to evict the tenant from the premises before the expiration of the lease term under the lease agreement. In order to prevent this eviction risk, a lease agreement should be annotated to the relevant land registry on the real property’s title deed records. Once a lease agreement is annotated, the new owner will be deemed to have acquired the premises together with the lease, and therefore will not be entitled to evict the tenant until the expiration of the lease term.

A lease agreement must be in written form for annotation with the land registry. In this regard, contrary to the popular misconception, it is not a legal requirement to execute lease agreements before a notary public in order to have the lease agreements annotated before the land registry. However, in the event a lease agreement is not executed in the statutory form before a notary public or the land registry, both the owner and the tenant must apply to the land registry to annotate the lease. If a lease agreement is executed in statutory form either before a notary public or the land registry, the tenant may unilaterally apply for annotation and the presence of the owner is not required. It is worth noting that the annotation will be subject to a land registry fee corresponding to 0.683% of the total rent amount payable for the entire lease term, in addition to the stamp duty arising out of the execution of the lease agreement.

¹ In order to file the eviction lawsuit, the new owner must notify the tenant of its intention within one month following the acquisition.

In light of the above, in order to fully secure their long-term investments, potential investors should consider annotating their lease agreements with the relevant land registries despite the additional cost burden and formalities.

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