

Procedure of Transfer of Immovable Property

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Transfer of property is an act of conveying property from one person to another, in present or future. According to section 8 of the Transfer of Property Act 1882 (The Act), by transferring property, transferor transfers all rights in a property. There are various modes of transferring ownership of property: permanently by 1) relinquishment 2) sale 3) gift; and temporarily by way of 4) mortgage 5) lease and, 6) leave and license agreement.

Under Sec 54, the **sale** is a transfer of ownership by a deed (sale deed/transfer deed) for a price, paid or promised or part paid and part promised. The sale deed is compulsorily required to be stamped (stamp duty) and registered (before a Sub-Registrar) and is for consideration. Sale of property may result in long term, or short term capital gains tax liability, depending upon the period of holding of the property. This tax is payable by the seller of the property, and there are provisions under the Income Tax Act 1961 to save long term capital gains tax. Also, the tax implications are different when you have an under construction property and when you receive the possession of it. Also, the purchaser of a property is required to withhold 1% tax and deposit it with an authorized bank.

Sec 105 of the Act defines **lease** as a transfer of the right to enjoy a property, for a certain period, express or implied, in consideration of a price paid or promised, money or any other thing of value, to be rendered periodically or on such occasions. Section 17 of the Registration Act, 1908 mandates registration of the rental agreement, if the lease period is for more than 11 months. In all other cases, oral agreement accompanied with the delivery of possession is sufficient. The registration process involves payment of stamp duty and registration fees. The lease deed should clearly specify the purpose of the tenancy whether residential or commercial. The contract should also clearly mention the provision for premature termination of the lease. Under a lease agreement, the tenant has exclusive possession of the property. A tenant can sub-let the premises to a third party unless prohibited or restricted under the rental agreement.

Sec 58 of the Act defines **Mortgage** as the transfer of interest in the specific immovable property by way of a mortgage deed or deposition of title deeds for securing payment of a loan. The owner of the property creating a lien on an immovable property to the lender is the mortgagor. The lender is the mortgagee.

In a mortgage, the mortgagor may either deposit title deeds of immovable property to the lender or his agent with intent to create security or execute a mortgage deed. If there is a debt and if the debtor deposits title deeds with an intention that the title deeds shall be security for the debt, then by the mere fact of deposit of those title deeds, a mortgage comes into being. A mortgage by deposit of title deed does not require registration. Sometimes, a memorandum accompanies the deposit of title deeds to evidence the purpose of deposition of title deeds by way of an aide memoir. Though a mortgage by deposit of title deeds can be created by a mere deposit of title deeds without any written contract between the parties, in case the bargain or contract is reduced to writing, then it has to be registered.

Under section 122 of the Act, one can transfer immovable property through registered **gift deed**. The immovable property is transferred voluntarily without any consideration. To make the transfer valid it is mandatory to register a gift deed with the sub-registrar as per section 17 of the Registration Act, 1908, and section 123 of the Transfer of Property Act. A donor does not have the right to revoke or cancel the registered deed at a later stage unless there is a specific clause mentioned in the deed. Section 126 of the Act provides for a situation wherein a donor can revoke a gift deed. For instance, if the property was gifted so that the recipient can reside in it, upon the death of the recipient, the property will get transferred back to the donor if she is alive, else to the heirs of the recipient. The Income-Tax Act 1961 specifies that capital gains arising out of a gifted property to blood relations are exempted from tax. However, income accrued from the gifted asset may be taxable.

Relinquishment is surrendering inherited or parental rights for another “legal heir”/ “another collateral” in the same property. In simple terms, relinquishment is a family arrangement where one legal heir surrenders his share in the property with or without monetary consideration for another legal heir. The relinquishment deed cannot be executed for another person who is not a legal heir. The relinquishment of property results in taxation of capital gains and on the basis of time horizon of holding the asset the gains are derived and taxes are calculated.

Registration of transfer of ownership of property

Once a property has been transferred by way of relinquishment, sale, or gift deed in the “name” of the recipient. It is also important to have the transfer recorded in the municipal records by way of **mutation**.

Stamp duty on transfer is payable as per applicable state laws. The stamp duty on gift deed may or may not be equal to the general stamp duty you pay on selling or relinquishing the property. It is different for different states in India.

Circle rate is the minimum price at which stamp duty is payable in case of transfer of immovable property. These rates are an indicator of likely prices of properties in various areas. Circle rates differ within cities in the same state, and among various localities of a city.

Where the actual price paid by a buyer is less than the circle rate, stamp duty is generally paid on the circle rate. However, a Sub-Registrar is required to allow registration of property even when the stamp duty paid is lower than the circle rate. However, it can impound the document and adjudicate proper stamp duty. The buyer can provide proof of the fact that the actual transaction is at the value stated in the deed, and that is the correct market value.

State governments collect stamp duty and registration charges on the declared value or the circle rate, whichever is higher, on the property being transferred. These charges are usually defined as a percentage of the transaction value and differ across states. Besides stamp duty, typically 1% of the value of the property is charged as registration fee (to register the document). Stamp duty payable in case the purchaser is a woman is generally lower by about 1%-2% in most states. In Delhi, when purchasers are one or more women, it's 4%, in case it's only men or a corporate body, it's 6% and in case it's a man and woman it's 5%. A further 1% is payable at registration charges.

For the seller of the property capital gains tax would be calculated on the value of the property as fixed by the Stamp Valuation Authority especially when such value is higher than the declared value of the property as appearing in the sale deed. In the situation of individuals and Hindu Undivided Families receiving properties from non-relatives, the circle value rate of the property would be treated as the amount on which income-tax is payable according to the Income-tax Act. In case a buyer gets it for a lower price, the difference would be chargeable to tax as “Other Income”.



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