

大規模な災害の被災地における借地借家に関する特別措置法

Act on Special Measures Concerning Land and Building Leases in Areas Affected by Large-Scale Disasters

(平成二十五年六月二十六日法律第六十一号)

(Act No. 61 of June 26, 2013)

(趣旨)

(Purpose)

第一条 この法律は、大規模な災害の被災地において、当該災害により借地上の建物が滅失した場合における借地権者の保護等を図るための借地借家に関する特別措置を定めるものとする。

Article 1 This Act provides for special measures concerning land and building leases designed to protect land leasehold right holders when buildings on the leased land in areas affected by large-scale disasters are lost due to the disasters.

(特定大規模災害及びこれに対して適用すべき措置等の指定)

(Designation of Specified Large-Scale Disasters and Measures Required to Be Applied)

第二条 大規模な火災、震災その他の災害であつて、その被災地において借地権者（借地借家法（平成三年法律第九十号）第二条第二号に規定する借地権者をいう。以下同じ。）の保護その他の借地借家に関する配慮をすることが特に必要と認められるものが発生した場合には、当該災害を特定大規模災害として政令で指定するものとする。

Article 2 (1) If a large-scale fire, earthquake, or any other disaster for which consideration for the protection of land leasehold right holders (meaning land leasehold right holders as defined in Article 2, item (ii) of the Act on Land and Building Leases (Act No. 90 of 1991); the same applies hereinafter) and other matters concerning land and building leases in the disaster-affected area is found to be particularly necessary occurs, the disaster is to be designated by Cabinet Order as a specified large-scale disaster.

2 前項の政令においては、次条から第五条まで、第七条及び第八条に規定する措置のうち当該特定大規模災害に対し適用すべき措置並びにこれを適用する地区を指定しなければならない。当該指定の後、新たに次条から第五条まで、第七条及び第八条に規定する措置を適用する必要があるときは、適用すべき措置及びこれを適用する地区を政令で追加して指定するものとする。

(2) In the Cabinet Order referred to in the preceding paragraph, among the

measures prescribed in the following Article through Article 5, Article 7, and Article 8, the measures required to be applied to the specified large-scale disaster and the districts to which the measures are applied must be designated. If it becomes necessary to newly apply the measures prescribed in the following Article through Article 5, Article 7, and Article 8 after the designation is made, the measures required to be applied and districts to which those measures are applied are to be added and designated by Cabinet Order.

(借地契約の解約等の特例)

(Special Provisions on Cancellation of Land Lease Contracts)

第三条 特定大規模災害により借地権（借地借家法第二条第一号に規定する借地権をいう。以下同じ。）の目的である土地の上の建物が滅失した場合（同法第八条第一項の場合を除く。）においては、前条第一項の政令の施行の日から起算して一年を経過する日までの間は、借地権者は、地上権の放棄又は土地の賃貸借の解約の申入れをすることができる。

Article 3 (1) If the building on the land that is the object of a land leasehold right (meaning the land leasehold right as defined in Article 2, item (i) of the Act on Land and Building Leases; the same applies hereinafter) has been lost due to a specified large-scale disaster (excluding the cases referred to in Article 8, paragraph (1) of that Act), the land leasehold right holder may request the waiver of the superficies or the termination of the land lease in the period of one year that commences on the date on which the Cabinet Order referred to in paragraph (1) of the preceding Article comes into effect.

2 前項の場合においては、借地権は、地上権の放棄又は土地の賃貸借の解約の申入れがあった日から三月を経過することによって消滅する。

(2) In the case referred to in the preceding paragraph, the land leasehold right is extinguished when three months have passed from the day the waiver of the superficies or the notice of termination of the land lease was made.

(借地権の対抗力の特例)

(Special Provisions on the Perfection of the Land Leasehold Right)

第四条 借地借家法第十条第一項の場合において、建物の滅失があっても、その滅失が特定大規模災害によるものであるときは、第二条第一項の政令の施行の日から起算して六月を経過する日までの間は、借地権は、なお同法第十条第一項の効力を有する。

Article 4 (1) In the case referred to in Article 10, paragraph (1) of the Act on Land and Building Leases, even if the building has been lost, if the loss was due to a specified large-scale disaster, the land leasehold right continues to have the effect referred to in Article 10, paragraph (1) of that Act in the period of six months have passed from the date on which the Cabinet Order referred to in Article 2, paragraph (1) comes into effect.

2 前項に規定する場合において、借地権者が、その建物を特定するために必要な事項

及び建物を新たに築造する旨を土地の上の見やすい場所に掲示するときも、借地権は、なお借地借家法第十条第一項の効力を有する。ただし、第二条第一項の政令の施行の日から起算して三年を経過した後にあっては、その前に建物を新たに築造し、かつ、その建物につき登記した場合に限る。

(2) In the case prescribed in the preceding paragraph, when the land leasehold right holder posts a notice at an easily visible place on the land which states the necessary matters for identifying the building and the fact that a building is to be newly constructed, the land leasehold right continues to have the effect referred to in Article 10, paragraph (1) of the Act on Land and Building Leases; provided, however, that after three years have elapsed from the date on which the Cabinet Order referred to in Article 2, paragraph (1) comes into effect, this is limited to the cases in which a building was newly constructed and the registration of the building was made before that date.

(土地の賃借権の譲渡又は転貸の許可の特例)

(Special Provisions for Permission to Transfer or Sublease the Right to Lease Land)

第五条 特定大規模災害により借地権の目的である土地の上の建物が滅失した場合において、借地権者がその土地の賃借権を第三者に譲渡し、又はその土地を第三者に転貸しようとする場合であって、その第三者が賃借権を取得し、又は転借をしても借地権設定者（借地借家法第二条第三号に規定する借地権設定者をいう。以下この項及び第四項において同じ。）に不利となるおそれがないにもかかわらず、借地権設定者がその賃借権の譲渡又は転貸を承諾しないときは、裁判所は、借地権者の申立てにより、借地権設定者の承諾に代わる許可を与えることができる。この場合において、当事者間の利益の衡平を図るため必要があるときは、賃借権の譲渡若しくは転貸を条件とする借地条件の変更を命じ、又はその許可を財産上の給付に係らしめることができる。

Article 5 (1) If a building on the land that is the object of the land leasehold right has been lost due to a specified large-scale disaster and the land leasehold right holder seeks to transfer the leasehold right in that land to a third party or sublease that land to a third party, and the lessor does not consent to the transfer or sublease of the leasehold right despite the fact that even if that third party acquires the leasehold interest or subleases the land, it is unlikely to be disadvantageous to the lessor (meaning the lessor as defined in Article 2, item (iii) of the Act on Land and Building Leases; hereinafter the same applies in this paragraph and paragraph (4)), the court may grant permission in lieu of the consent of the lessor, pursuant to the petition of the land leasehold right holder. In such a case, when it is necessary for facilitating equitable benefit between the parties, the court may order changes to the land lease terms in which the transfer or sublease of the right to lease is the condition for the order, or may require the payment of monetary consideration for the permission.

2 借地借家法第十九条第二項から第六項までの規定は前項の申立てがあつた場合について、同法第四章の規定は同項に規定する事件及びこの項において準用する同条第三項に規定する事件の裁判手続について、それぞれ準用する。この場合において、同法第十九条第三項中「建物の譲渡及び賃借権」とあるのは「賃借権」と、同法第六十二条中「建物の譲渡」とあるのは「賃借権の譲渡又は転貸」と読み替えるものとする。

(2) The provisions of Article 19, paragraphs (2) through (6) of the Act on Land and Building Leases apply mutatis mutandis to cases in which the petition referred to in the preceding paragraph has been filed, and the provisions of Chapter IV of that Act apply mutatis mutandis to the judicial proceedings of the cases prescribed in that paragraph and the cases prescribed in paragraph (3) of that Article as applied mutatis mutandis pursuant to this paragraph. In such a case, the phrase "the transfer of the building and the building lease" in Article 19, paragraph (3) of that Act is deemed to be replaced with "the right of lease", and the term "the transfer of the buildings" in Article 62 of that Act is deemed to be replaced with "the transfer or sublease of the right of lease".

3 第一項の申立ては、第二条第一項の政令の施行の日から起算して一年以内に限り、することができる。

(3) The petition referred to in paragraph (1) may be filed only in the period of one year that commences on the date on which the Cabinet Order referred to in Article 2, paragraph (1) comes into effect.

4 前三項の規定は、転借地権（借地借家法第二条第四号に規定する転借地権をいう。）が設定されている場合における転借地権者（同条第五号に規定する転借地権者をいう。次条において同じ。）と借地権設定者との間について準用する。ただし、借地権設定者が第二項において準用する同法第十九条第三項の申立てをするには、借地権者の承諾を得なければならない。

(4) The provisions of the preceding three paragraphs apply mutatis mutandis to the relationship between the land sublease right holder (meaning the land sublease right holder as defined in Article 2, item (v) of the Act on Land and Building Leases; the same applies in the following Article) and the lessor if a land sublease right (meaning the land sublease right as defined in item (iv) of that Article) has been established; provided, however, that when the lessor files the petition referred to in Article 19, paragraph (3) of that Act as applied mutatis mutandis pursuant to paragraph (2), the consent of the land leasehold right holder must be obtained.

（強行規定）

(Mandatory Provisions)

第六条 前三条の規定に反する特約で借地権者又は転借地権者に不利なものは、無効とする。

Article 6 The special provisions that run counter to the provisions of the preceding three Articles and that are disadvantageous to the land leasehold

right holder or the land sublease right holder are void.

(被災地短期借地権)

(Short-Term Land Leasehold Rights in Disaster-Affected Areas)

第七条 第二条第一項の政令の施行の日から起算して二年を経過する日までの間に、同条第二項の規定により指定された地区に所在する土地について借地権を設定する場合には、借地借家法第九条の規定にかかわらず、存続期間を五年以下とし、かつ、契約の更新（更新の請求及び土地の使用の継続によるものを含む。）及び建物の築造による存続期間の延長がないこととする旨を定めることができる。

Article 7 (1) Notwithstanding the provisions of Article 9 of the Act on Land and Building Leases, if a land leasehold right is to be established for land located in a district designated pursuant to the provisions of Article 2, paragraph (2) in the period of two years that commences on the date Cabinet Order referred to in paragraph (1) of that Article comes into effect, it may be specified that the duration of the land leasehold right is to be five years or less and that there is to be no extension of the duration due to renewal of the contract (including renewal pursuant to a request for renewal or due to continued use of land) or construction of a building.

2 前項に規定する場合において、同項の定めがある借地権を設定するときは、借地借家法第十三条、第十七条及び第二十五条の規定は、適用しない。

(2) In the case prescribed in the preceding paragraph, when establishing a land leasehold right subject to the provisions referred to in that paragraph, the provisions of Article 13, Article 17, and Article 25 of the Act on Land and Building Leases do not apply.

3 第一項の定めがある借地権の設定を目的とする契約は、公正証書による等書面によってしなければならない。

(3) A contract for the purpose of establishing a land leasehold right subject to the provisions referred to in paragraph (1) must be concluded in writing by a notarial deed or other such documents.

4 第一項の定めがある借地権の設定を目的とする契約がその内容を記録した電磁的記録（電子的方式、磁気的方式その他の知覚によっては認識することができない方式で作られる記録であって、電子計算機による情報処理の用に供されるものをいう。）によってされたときは、その契約は、書面によってされたものとみなして、前項の規定を適用する。

(4) If a contract for the purpose of establishing a land leasehold right that is subject to the provisions referred to in paragraph (1) is concluded by means of an electronic or magnetic record in which the content of the contract is recorded (meaning a record created in electronic form, magnetic form, or any other form that cannot be perceived by the human senses which is used in information processing by computers), the contract is deemed to have been concluded in writing, and the provisions of the preceding paragraph apply.

(従前の賃借人に対する通知)

(Notice to Previous Lessees)

第八条 特定大規模災害により賃借権の目的である建物（以下この条において「旧建物」という。）が滅失した場合において、旧建物の滅失の当時における旧建物の賃貸人（以下この条において「従前の賃貸人」という。）が旧建物の敷地であった土地の上に当該滅失の直前の用途と同一の用途に供される建物を新たに築造し、又は築造しようとする場合であって、第二条第一項の政令の施行の日から起算して三年を経過する日までの間にその建物について賃貸借契約の締結の勧誘をしようとするときは、従前の賃貸人は、当該滅失の当時旧建物を自ら使用していた賃借人（転借人を含み、一時使用のための賃借をしていた者を除く。）のうち知れている者に対し、遅滞なくその旨を通知しなければならない。

Article 8 If a building that is the object of the right of lease (hereinafter referred to as the "former building" in this Article) has been lost due to a specified large-scale disaster, and the lessor of the former building at the time of the loss of the former building (hereinafter referred to as the "previous lessor" in this Article) constructs or seeks to construct a new building on the land that was the site of the former building to be used for the same purpose as the purpose immediately prior to the loss, when the previous lessor intends to solicit conclusion of a lease contract for the building in the period of three years that commences on the date on which the Cabinet Order referred to in Article 2, paragraph (1) comes into effect, the previous lessor must notify the known lessees (including sublessees, and excluding the persons who have leased the former building for temporary use) who had used the former building at the time of the loss of that fact without delay.