

# REAL ESTATE LEASING IN COMMERCIAL PROCEEDINGS

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## Executive Summary:

- The Supreme Court of Justice of the Nation (SCJN) has revised its criteria to allow disputes related to real estate leases to be processed through commercial litigation, provided they are deemed to have speculative commercial purposes, classifying them as commercial acts under a broader interpretation of Article 75 of the Commercial Code.
- This change provides greater clarity in procedures for leases with commercial purposes but also introduces challenges, as the classification as a civil or commercial act will depend on specific judicial interpretation, potentially creating uncertainty regarding the applicable rules.

For many years, jurisprudence 1a./J. 63/98 [1] of the Supreme Court of Justice of the Nation ("SCJN") set a clear rule: disputes arising from real estate leases must be processed through civil proceedings. According to these criteria of the SCJN, real estate leasing should not be considered a commercial act, since it is not listed in article 75 of the Commercial Code as a commercial act.

This precedent was revised and abandoned by the First Chamber of the SCJN on April 30, 2023, through jurisprudence 1a./J. 170/2023 (11th)[2]. Thus, the SCJN ruled that, under certain conditions, commercial proceedings may be appropriate to resolve disputes related to the lease of real estates. This change reflects the need to recognize that some leases have commercial speculation purposes and are essentially commercial acts.

To determine whether commercial proceedings are applicable, it is necessary to define whether the specific real estate lease constitutes a commercial act. In this regard, the SCJN highlighted that the list of

commercial acts set forth in article 75 of the Commercial Code is not limitative but is merely illustrative and, therefore, there may be commercial acts not explicitly mentioned in said article -*such as real estate leasing*-. Also, the Supreme Court stated that section XXV of the article in question establishes that commercial acts are those expressly listed as well as those similar acts carried out for purposes of commercial speculation.


Thus, it was determined that, although real estate leasing is not explicitly classified as a commercial act, it could be considered as such. Therefore, if the lease has a commercial speculative purpose, it will be considered a commercial act, which means any dispute related to it must be resolved through commercial proceedings.

This change has several implications. On the one hand, it grants greater certainty to the parties involved in a commercial real estate lease dispute, since there is now a clear ruling for the proceedings to be followed. However, it could generate uncertainty as to

the nature of the act, which, in turn, would generate doubts as to the rules and procedural law to be applied in the event of a dispute.

In this sense, although this new decision of the SCJN offers a more realistic approach, it also poses the challenge of operating in an environment where the procedure depends on the judicial interpretation of the nature of the act *-civil or commercial-*.

In conclusion, the new criteria of the SCJN opens the doors to process real estate lease disputes in the mercantile proceeding and marks a significant change in the Mexican legal system. By abandoning the jurisprudence that restricted these disputes to civil proceedings, and by allowing, under certain conditions, commercial proceedings, it recognizes the possibility that certain leases *-those with commercial speculation purposes-*, may be considered commercial acts.

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- [1] <https://sjf2.scjn.gob.mx/detalle/tesis/194955>  
[2] <https://sjf2.scjn.gob.mx/detalle/tesis/2027554>

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