

REAL ESTATE LAW

SUGGESTED AMENDMENTS TO NEW JERSEY PRINTED COMMERCIAL REAL ESTATE LEASE FORMS

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Introduction

Parties to commercial leases use pre-printed New Jersey commercial lease forms for various reasons. A landlord may use the form to minimize attorneys fees or to attempt to avoid negotiations with a prospective tenant because the forms are presented as "standard". Typical printed forms used in New Jersey are:

- All-State Legal Supply Company form 255 - Lease for Business and Commercial Use Only;
- All-State Legal Supply Company form 253 - Lease (Gilsey) Advanced Revision (Ind. or Corp.) Business and Commercial Use Only; and
- Julius Blumberg, Inc. Form M879 - Business Lease, Plain Language.

Note: While certain differences among the forms exist, they will be collectively referred to as "the forms" for the purposes of this article. If applicable only to the All-State forms, the reference will be to "the All-State forms."

The following are suggested amendments to these boilerplate forms for both landlords and tenants, depending upon the transaction. There may, of course, be other clauses which are warranted by specific circumstances.

Additional Lease Provisions - Landlords

1. Limitation of Liability. Typically a landlord will wish to add a provision limiting its liability. As such, the typical clause should be amended to state that the tenant shall look solely to landlord's equity in the property of which the premises are a part for the satisfaction of tenant's remedies in the event of a breach of the lease by the landlord. It may further state that if the landlord sells the property, its liability for the performance of its agreements in the lease shall end on the day of the sale of the property and that the tenant shall look solely to the purchaser for performance of the agreement.

2. Insurance. An amendment to the forms should require that the tenant maintain fire and extended coverage, vandalism, malicious mischief and special extended coverage insurance in an amount which is adequate to cover the cost of replacement of all personal property, decorations, trade fixtures, furnishings, equipment and other contents on the premises. The amendment should also require the tenant to maintain worker's compensation insurance. The amendment should further state that the tenant shall maintain insurance with responsible insurance companies authorized to do business in the State of New Jersey reasonably satisfactory to the landlord, that a certificate of insurance be furnished to the landlord, that the insurance policy shall not be canceled or amended except upon prior written notice to the landlord, and that the

insurance policy contain a waiver of subrogation clause.

3. Default and Remedies. The landlord may wish to amend the standard forms to request, for example, that rent be accelerated in the event of a default by the tenant.

4. Additional Charges. If the tenant is to pay a pro-rated share of common area charges such clause must be added.

5. Environmental. Depending upon the use, it is often desirable to address environmental concerns including indemnification by the tenant of the landlord in the event of tenant's breach of environmental obligations.

6. Miscellaneous Additional Amendments. If not addressed by the standard forms, it may also be desirable to add the following types of clauses:

- force majeure (e.g., acts of God)
- notice provisions
- waiver of trial by jury
- broker's commissions
- mechanisms for the governing of disputes
- more specific signage and parking provisions
- restrictive covenants
- utility provisions when not accurately addressed by the printed form.

Note: A "plain language" form should be utilized in appropriate circumstances when dealing with an individual tenant to whom the plain language law (N.J.S.A. 56:12-1 et seq.) is applicable.

Additional Lease Provisions - Tenants

1. Repair and Care. The printed All-State forms state that the tenant will take good care of the premises and shall at the tenant's own cost and expense "make all repairs, including painting and decorating, and shall maintain the premises in good condition and state of repair, and that at the end or other expiration of the term hereof, shall deliver up the rented premises in good order and condition, wear and tear from a reasonable use thereof, and damage by the elements not resulting from the neglect or fault of the tenant,

excepted."

The tenant will want to request, however, that the lease state that the landlord be responsible for certain repairs, particularly in a short term lease and/or where the tenant is occupying only a portion of the building. The tenant should request that the lease affirmatively state that the landlord shall be responsible for structural repairs and replacements, roof repairs and replacements, repair and maintenance of major systems, and any other maintenance, repair or replacement obligations of landlord that the tenant can negotiate.

The forms also state that the tenant shall maintain the premises in a clean condition "free from debris, trash, refuse, snow and ice" or that the tenant shall "keep the walks, driveway, yard, parking area, entrances, hallways, and stairs clean and free from trash, debris, snow and ice." This may be inappropriate when the tenant is only occupying a portion of the building and the landlord is expected to perform cleaning and snow removal in the common areas.

2. Compliance with Laws. The forms require the tenant to comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and Municipal Governments or Public Authorities for the correction, prevention, abatement of nuisances, violations or other grievances in, upon or connected with the premises during the term, etc. The tenant will want to limit its responsibility for compliance with laws to that arising from tenant's use only.

3. Alterations. The forms require landlord's consent to alterations. Tenant should request that landlord's consent shall not be unreasonably withheld.

4. Fire and Casualty. The All-State forms provide that only landlord may terminate the lease in the event of fire or other casualty. A tenant will also want the right to terminate the lease if the premises are not restored within a specified period of time. Similarly, these All-State clauses should delete the references to "in the opinion of landlord" in providing that there will be a reduction in the rent if the premises shall be rendered untenable.

5. Inspection by Landlord. The forms provide that the landlord may enter upon the premises to inspect and repair. But a tenant may desire advance notice prior to inspection, except in an emergency.

6. Assignment and Sublease. The forms state that tenant shall not assign or sublet the premises without the landlord's consent. Typically the tenant will wish to request that the landlord's consent shall not be unreasonably withheld or delayed. The parties may also wish to address allocations of profits resulting from an assignment or sublease.

7. Liability. The All-State forms set forth the non-liability of the landlord without exception. The tenant will wish to request that there be an exception in the event of the landlord's negligence or willfulness conduct.

8. Condemnation. Condemnation provisions in the forms do not provide for any claim to be made by tenant in the event of condemnation. The forms provide that the entire payment for the taking shall belong to the landlord and the tenant shall make no claim for the value of the lease for the remaining part of the lease. Tenant should seek to amend the forms to provide that the tenant may make its own claim in the event of condemnation, at least for relocation expenses and perhaps more depending upon the nature of the lease, such as tenant's investment, etc.

9. Default and Remedies. Regarding tenant default, a tenant might wish to ask for notice in the event of a default, with an opportunity to cure.

10. Security Deposit. The tenant should request that the lease require return of the security deposit within a specified number of days following the end of the lease and if the landlord requires the use of any portion of the security deposit, the remaining portion be returned upon the termination of the lease.

11. Miscellaneous. Tenants may, as applicable to the transaction, desire clauses that address:

- an option to renew or option to purchase
- right of first refusal
- a nondisturbance agreement from any current or future mortgagee
- broker's commissions
- signage and parking provisions
- payment for utilities
- non-competition clauses in the case of a retail lease

Conclusion

In conclusion, the terms in the so-called standard lease forms should be negotiated. A party would be penny-wise and pound-foolish not to utilize the services of an attorney when dealing with such forms.

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