



SUBLEASE OF RESIDENTIAL LEASE (WITH LANDLORD CONSENT) GUIDE

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1. Overview

From time to time, tenants may want to leave a rental property before the end of their lease. People may take new jobs in new cities, and companies may go out of business or sell their assets to a third party. Whatever the reason, tenants can transfer their lease interests to new parties by writing and signing a sublease.

A sublease is the transfer of part of one party's lease rights and obligations to a third party. From that point on, the new tenant is responsible for the original tenant's lease obligations, including rent and property maintenance. However, the original tenant will still be ultimately liable for most (if not all) of its duties.

Successful property management begins with good documentation, and a properly-drafted and executed sublease will ensure that all parties – new and old – understand the obligations and responsibilities being transferred. In every way, this lays the foundation for a great (and long-lasting) landlord/new tenant relationship.

2. Dos & Don'ts Checklist

- ☐ A sublease will give a third party only the specific rights provided in the sublease. The original tenant still remains ultimately liable for any remaining lease obligations, or any failure of the new tenant to meet his or her obligations. This means that the original tenant will be responsible (to the same degree as the new tenant) for any missed rent payments or property damage.
- ☐ A sublease is different than an assignment. An assignment is the complete transfer of one party's interest in an agreement to a third party. If it is a lease assignment, the original tenant gives all of his or her interest to a new tenant. The new tenant is said to "step into the shoes" of the old tenant, and the old tenant is released from most of his or her obligations under the lease (although this can be changed by agreement).
- ☐ Be sure the new tenant gets a copy of the original lease. He or she will be bound by its terms, and should know what his or her new obligations and rights are. A copy should be attached to the sublease as Exhibit A.
- ☐ The original tenant cannot give more rights than it has under the original lease. For example, if the term of the lease is one year, the term of the sublease cannot be two years.
- ☐ Most leases require the landlord's written consent before the sublease becomes effective. Review your original lease agreement for additional information, and to see if there are additional requirements to make the transfer valid.
- ☐ Although a landlord is not required to consent to a sublease, in some cases your lease will state that a landlord's consent cannot be "unreasonably" withheld. This is more common in commercial leases. What is considered unreasonable varies from jurisdiction to jurisdiction and you should review the laws in your area (and the language in your original lease agreement) for additional

information. On the other hand, if the lease states that the landlord may use his or her “sole discretion” to evaluate the new tenant, he or she can veto a sublease for any reason.

- ☐ Depending on your jurisdiction or the terms of your original lease, a landlord’s failure to respond to your request for consent to sublease within a certain time may itself be deemed consent. In some cases, it gives a tenant grounds to terminate the lease. Review the original lease and your state’s laws for additional details.
- ☐ A landlord may consider only proper factors when deciding whether or not to consent to a sublease. Some criteria will be considered impermissible by courts (e.g., refusal is based on the new tenant’s race or sex). If your landlord does not consent to your attempted sublease, make sure he or she gives you clear written reasons for the decision. Failure to provide these reasons can itself be deemed unreasonable.
- ☐ Sign three copies of the sublease, one for you, the other party, and the landlord.
- ☐ Depending on the nature of its terms, you may decide to have the document witnessed or notarized. This will limit later challenges to the validity of a party’s signature.
- ☐ State laws governing real estate, renting, leasing, and subleases vary widely, and can have a tremendous effect on your arrangement. In some cases, specific information must be included in the sublease. In others, certain language must be excluded from your agreement. Review your state and local laws for additional information about what is required in your area.
- ☐ If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Sublease of Residential Lease (with Landlord Consent) Instructions

The following provision-by-provision instructions will help you understand the terms of your sublease.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to provisions in the form. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a sublease of a residential lease. Write in the date on which the Sublease will become effective (often the date on which it is signed). Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., “Landlord”) that will be used throughout the document. The current tenant is called the “Sublessor,” because he or she is the person who is subletting the interest. The new tenant is called the “Sublessee.”

When the Agreement refers to any of the individuals involved (i.e., no one specifically), the term “Parties” is used.

- **Recitals.** The “whereas” clauses, referred to as recitals, define the world of the Sublease and offer key background information about the parties. In this Sublease, the recitals include a simple statement of the Parties’ intent to transfer the Sublessor’s interest in the Lease and the Sublessee’s intent to

assume it. Provide a brief description of the property being rented, and the name of the landlord under the Lease. Attach a copy of the Lease to the Sublease as Exhibit A.

Describe the Premises that are being subleased. You don't need to include a full legal description, but provide enough information so it can be clearly identified. For individual houses, the address will usually be sufficient. If the property has a specific name (e.g., "Lincoln Towers"), include that as well. If only a section of the Premises is being subleased, make that clear in this description.

- **Section 1: Sublease.** This section essentially confirms the Parties' agreement that the Sublessor will sublease its rights and interests in the Lease to the Sublessee. This paragraph allows you to determine whether all of the Sublessor's interest in the Lease is being subleased, or only part of it. For example, if interest in only one half of the Premises is being subleased, this should be clearly noted in the space provided.
- **Section 2: Assumption of Rights and Duties.** Provides that the Sublessor is no longer primarily responsible for the duties listed under the Lease (e.g., rent, maintenance of property, etc.). There are two options provided regarding the continuing liability of the Sublessor. In the first, the Sublessor is completely released from any liability it had under the Lease. If the Sublessee defaults, for example, the Landlord cannot seek payment from the Sublessor. In the second, the Sublessor will be liable to the Landlord if the Sublessee defaults. Select the option that best suits your arrangement, and delete the other.

Note that, in any event, the Sublessor will remain responsible for any obligations that occurred before the Sublease became effective. In other words, if damage happened to the apartment before the transfer, or if the Sublessor did not fulfill another obligation under the Lease, he or she remains responsible for that damage.

- **Section 3: Term.** Set a specific length of time that the Sublease will last. This can't be longer than the remaining time left on the Lease. Enter a start date, which can either be a specific future date or the Effective Date that you established in the first paragraph of the Sublease, and an end date.

If you are setting an end date that is the same as the last date under the Lease, consider whether or not you should be using an assignment and not a sublease.

- **(Optional) Section 4: Termination of Lease.** An optional provision explaining what will happen to the Sublease if the Lease is terminated. The Sublease is based on the Lease. If the Lease terminates, the Sublease must also terminate. The Sublessor promises to give at least thirty (30) days' notice if it intends to terminate the Lease.
- **Section 5: Security Deposit.** In many rental relationships, amounts are paid in advance or deposited as security for the landlord. At the end of the lease, this money (with deductions subtracted or interest added) is returned to the tenant. In a sublease relationship, the sublessor will still be responsible for any damages caused by the sublessee. The landlord will be allowed to deduct the amount of this damage from the sublessor's security deposit. Section 5 allows the Sublessor to hold the Sublessee's money to cover any damages (or failure to pay rent) during the term. The money will be returned at the end of the Sublease. Enter the amount of time after the end of the Sublease within which the Sublessor must return this deposit (minus any deductions) to the Sublessee.
- **Section 6: Indemnification.** The Sublessee's promise to bear the financial cost of any injury the Sublessor suffers because of the Sublease, or any lawsuits arising out of the Sublessee's activities on

the Premises. There is a specific exception for things done by the Sublessor before the Effective Date and after the End Date of the Sublease – the Sublessor remains responsible for those actions.

- **Section 7: Continuing Effectiveness of Lease.** Emphasizes that except for the Sublease, the original terms of the Lease are still effective.
- **Section 8: Sublessor's Representations and Warranties.** Lists the Sublessor's promises under the Sublease. Note that this is not a detailed list of services to be provided. Rather, this is the Sublessor's assurance that the Lease and the rental interest that it's providing is useful (i.e., that no one else lives or has an interest in the place, that the lease is still in effect, that the Sublessor is not behind in rental payments, etc.). If there are additional representations that you think the Sublessor should be making, feel free to include those here.
- **(Optional) Section 9: Sublessee's Interest in the Apartment.** An optional provision that should be included if there are (and will be) tenants in the apartment in addition to the Sublessee. If there will be other people, this section allows you to explain how many others there will be and what access the Sublessee will have to the common areas of the apartment. If you remove this section, correct the section numbers and references in the document.
- **Section 10: Condition of Premises.** Notes that the Premises are not being warranted to be perfect or useful in a particular way. Rather, the Sublessee is taking the rented property for what it is, and is accepting it in that state.
- **(Optional) Section 11: Parental/Guardian Guarantee.** If the Sublessee is under the age of 18, he or she can't legally enter a contract and the Sublessor and Landlord may not have assurance that the Lease obligations will be met. This optional subsection requires the signature of a minor Sublessee's parent or guardian, and the promise of that person that if the Sublessee does not meet its obligations, the parent or guardian will be responsible for those. If you remove this section, correct the section numbers and references in the document.
- **(Optional) Section 12: Additional Terms of Sublease.** An optional provision allowing the Sublessor and the Sublessee to include any representations, warranties, or other provisions particular to their situation. If you remove this section, correct the section numbers and the references in the document.
- **Section 13: Interpretation.** Provides that both Parties were on equal footing in the negotiation of the Sublease. In many cases, contracts are interpreted in favor of the individual who did not draft it. This clause makes clear that both Parties were involved in the drafting, and so the document should not be read in favor of (or against) either.
- **Section 14: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Sublessor and the Sublessee.

The paragraph at the bottom of this section explains that the time periods that are given under the main Lease are shortened for purposes of the subleasing arrangement. This is to give the Sublessor enough time to complete obligations under the Lease if the Sublessee does not. Because the Sublessor remains ultimately responsible for the Sublessee's failure to do something, this provision gives a 3-day cushion for the Sublessor to protect himself.
- **Section 15: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both Parties.

- **Section 16: Governing Law.** Allows the Parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided. The governing law will almost always be that of the place where the apartment or rental building is located. It's generally a bad idea to attempt to use a different location.
- **Section 17: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the Parties sign the Sublease in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 18: Entire Agreement.** The Parties' agreement that the document they're signing (together with the original Lease) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a Party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Landlord's Consent [and Release].** Review the terms of the original Lease to determine whether or not the Landlord's consent is required to make the Sublease effective. This is usually the case. If so, have the Landlord sign the document in the space provided.

Note that there are two options provided at the end of the consent. You may choose only one of these and should delete the one that you do not use. The first option corresponds to the brackets in Section 2 of the Sublease. If the Sublessor will remain responsible under the Lease, even after the Sublease, include this first bracketed language in the consent. For example, if the Sublessee doesn't make rent payments, the Landlord will be able to get these payments from the Sublessor. Delete the phrase "and Release" from the title of this paragraph if you choose this option.

If the Sublessor will not be responsible under the Lease, select the second bracketed phrase, which releases the Sublessor from any remaining liability. In other words, the Landlord cannot look to the Sublessor for damages or rental payments if the Sublessee doesn't perform any of its obligations under the Lease. If you include this clause, you can keep the bracketed language in the title of the paragraph (i.e., the title will be "Landlord's Consent and Release").

- **Exhibit A: Lease.** Attach a copy of the existing and signed Lease to the document as Exhibit A. If there are any amendments to that Lease, be sure to attach those as well.

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SUBLEASE OF RESIDENTIAL LEASE

This Sublease of Lease (the "Sublease") is made and effective as of _____, 20____ (the "Effective Date") by and between _____, [an individual] [corporation] [etc.] (the "Sublessor") and _____, [an individual][corporation][limited liability company] [etc.] (the "Sublessee"). The Sublessor and the Sublessee may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Sublessor, as lessee, is party to that certain lease agreement with _____, as lessor (the "Landlord"), dated as of _____, a copy of which is attached as Exhibit A hereto and made a part hereof by reference (the "Lease"); and

WHEREAS, the Lease covers certain property located at _____, and more particularly described as follows:

(the "Premises"); and

WHEREAS, the Sublessor wishes to sublease certain of its right _____ the Lease and to the Premises to the Sublessee, and the Sublessor has an interest of interest in the Lease and the Premises _____ conditions set forth _____