



LANDLORD CONSENT TO ASSIGNMENT OF LEASE & GUIDE

Included:

Overview

Dos and Don'ts Checklist

Landlord Consent to Assignment of Lease Instructions

Sample Landlord Consent to Assignment of Lease

1. Overview

Many contracts include provisions indicating that they (and the responsibilities that accompany them) cannot be assigned without the written permission of one or both parties. In most lease agreements, for example, tenants are not permitted to assign their interests without the prior written consent of their landlord.

In real estate transactions, it is essential that all exchanges and transfers be detailed on paper – in some cases, these may not be valid unless they have been memorialized in writing. Use the enclosed document to consent to your tenant's assignment of his or her lease interest. Successful property management begins with good documentation, and a properly-drafted and executed consent will ensure that all parties – new and old – understand the obligations that are being transferred and the responsibilities that they will have.

2. Dos & Don'ts Checklist

- ☐ An assignment is the complete transfer of one party's interest in an agreement to a third party. In this case, the original tenant is giving all of his or her interest to a new tenant. That new tenant steps into the shoes of your old tenant, and your old tenant is released from most of his or her obligations under the lease (although this can be changed by agreement). This is not the same as a sublease. Under a sublease, a third party is granted only those specific rights provided in the sublease. The original tenant still remains ultimately liable for residual obligations under the lease, or any failures of the new tenant to meet his or her obligations. This means that the original tenant will be responsible (in equal measure with the new tenant) for any skipped rent payments or damage to the property.
- ☐ Although you are not required to consent to the assignment of a lease, in some cases your lease will state that your consent will not 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.
- ☐ When deciding whether or not to consent to the assignment, you may consider only proper factors. Some criteria will be considered impermissible by courts (e.g., refusal is based on race or sex of the proposed new tenant). If you intend to refuse your consent, talk to a lawyer to make sure this refusal is permissible. Moreover, if you do refuse consent, give your tenant clear written reasons for the refusal decision. Failure to provide such reasons can itself be deemed unreasonable.
- ☐ It's a good idea to create a standardized policy and procedure for responding to assignment consents. Dealing with them on a case-by-case basis leaves you open to accusations of improper or unfair dealing. A smart first step is to send your tenant a letter requesting detailed information about the proposed assignee's finances and his or her planned uses of the property. The letter should also inform your tenant that the approval process will begin after you receive this information.

- ☐ Depending on your jurisdiction or the terms of your original lease, failing to respond to a tenant's request for consent to assignment within a certain time period may itself be deemed consent. In some cases, it may give the tenant grounds to terminate the lease. In any event, it's a good idea to respond within a reasonable time frame. Review the original lease and your state's laws for additional details.
- ☐ If your tenant opposes your refusal to consent, be cautious about your next steps. You cannot simply terminate the lease or evict your tenant. If the refusal was wrongful, these steps might compound your liability.
- ☐ The enclosed document does not constitute the assignment of the lease. A separate document assigning your tenant's obligations must be completed by your tenant and the third party to whom his or her interests are being assigned.

3. Landlord Consent to Assignment of Lease Instructions

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

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 consent to assignment of lease. Write in the date on which the consent 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 agreement. The landlord of the property is called the "Landlord" and the tenant is called the "Assignor." An assignor is called that because he or she is the person who is assigning the interest.
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this consent, the recitals include a simple statement of the parties' intent to assign the tenant's interest in the Lease and the Landlord's intent to consent. Provide a brief description of the property being rented, and the name of the third party to whom the Lease is being assigned. Attach a copy of the Lease to the consent as [Exhibit A](#).
- **Section 1: Consent to Assignment.** The Landlord's consent to the assignment of the Assignor's interest in the Lease. Attach a copy of the proposed assignment form as [Exhibit B](#) to the consent.
- **Section 2: Assumption of Rights and Duties.** Provides that the Assignor is no longer 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 Assignor. In the first, the Assignor is completely released from any liability it had under the Lease. If the Assignee defaults, for example, the Landlord cannot seek payment from the Assignor. In the second, the Assignor will be liable to the Landlord if the Assignee defaults. Select the option that best suits your arrangement, and delete the other.

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

- **Section 3: Continuing Effectiveness of Lease.** Emphasizes that except for the assignment, the original terms of the Lease are still effective.
- **(Optional) Section 4: Additional Terms of Assignment.** An optional provision allowing the Landlord and the Assignor to include any representations, warranties, or other provisions particular to their situation. For example, the Landlord may wish to assign a new parking space to the Assignee. If you remove this section, correct the section numbers and the references in the document.
- **Section 5: Interpretation.** Provides that both parties were on equal footing in the negotiation of the consent to assignment. 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 6: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both parties.
- **Section 7: 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 8: 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 consent 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 9: Entire Agreement.** The parties' agreement that the document they're signing 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.

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LANDLORD'S CONSENT TO ASSIGNMENT OF LEASE

This Landlord's Consent to Assignment of Lease (the "Consent") is made and effective as of _____, 20____ (the "Effective Date") by _____, [an individual] [corporation] [etc.] (the "Landlord") in favor of _____, a _____ [an individual][corporation][limited liability company] [etc.] (the "Assignor"). The Landlord and the Assignor may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Landlord is the owner and landlord of the real property located at _____ (the "Premises"); and

WHEREAS, the Landlord, as lessor, and the Assignor, as lessee, entered into that certain lease agreement covering the Premises, a copy of which is attached as Exhibit A hereto (the "Lease"); and

WHEREAS, the Assignor wishes to assign all of its rights and obligations as lessee under the Lease to _____ (the "Assignee"), and the Assignee wishes to accept this assignment of the Lease and assume these obligations on the terms and conditions set forth in this Consent; and

WHEREAS, the Landlord is willing to consent to this assignment and agree to the terms and conditions set forth in this Consent.

NOW THEREFORE, in consideration of the sum of _____ Dollars, to the Assignor and benefits contained herein, the Landlord