

Real Estate Leasing: New Jersey

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A Q&A guide to commercial real estate leasing law for landlords and tenants in New Jersey. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Real Estate Leasing: State Q&A Tool](#)).

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Execution and Enforceability

1. Describe any formal requirements for the execution of a lease. In particular specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.

- There are any homestead law requirements.
- There are any other important requirements in your state.

Witnesses

Witnesses are not required to properly execute a lease.

Acknowledgments

Acknowledgments are not required to properly execute a lease. However, acknowledgments are required in order to properly record a lease or memorandum of lease.

Counterpart Signatures

There are no countersignature requirements in a commercial lease. Counterpart signatures are enforceable, so long as this is explicitly provided for in the lease.

Electronic Signatures

Signatures delivered by facsimile or emailed transmission (typically in PDF format or other appropriate electronic formats as agreed to by the parties) are enforceable, so long as this is expressly provided for in the lease.

Homestead Laws

There are no homestead laws applicable to the execution of a lease.

Other Requirements

A transaction intended to create a lease for more than three years is not enforceable unless:

- The term of the lease, the leased premises, and the identity of the lessor and lessee are established in a writing that is signed by or on behalf of the party against whom enforcement is sought.
- Clear and convincing evidence proves the term of the lease, the real estate, and the identity of the lessor and lessee.

(N.J.S.A. 25:1-12.)

2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

It is not required in New Jersey to record the lease or a memorandum of lease. Recording a lease or a [memorandum of lease](#), however, provides [constructive notice](#) to third parties. The tenant's possession of the premises provides actual notice of the lease to third parties that the tenant has an interest in the premises.

3. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

The statutory requirements for acknowledgment forms are contained in [Section 46:14-2.1 of the New Jersey Statutes Annotated](#).

Officers of New Jersey authorized to take acknowledgments in the state are:

- An attorney-at-law.
- A notary public.
- A county clerk or deputy county clerk.
- A register of deeds and mortgages or a deputy register.
- A surrogate or deputy surrogate.

A seal of the officer does not need to be affixed to the acknowledgment.

Additionally, other authorized officers include:

- Any officer of the United States or of a state, territory, or district of the United States.
- Any officer of a foreign nation authorized at the time and place of acknowledgment to take acknowledgments or proofs.
- A foreign commissioner of deeds for New Jersey within the jurisdiction of the commission.
- A foreign service or consular officer or other United States representative to a foreign nation, within that foreign nation's territory.

(N.J.S.A. 46:14-6.1.)

If an instrument cannot be acknowledged, the instrument may be proved in Superior Court by proof of handwriting or otherwise, to the satisfaction of the court. All parties whose interests may be affected must receive notice of the application (N.J.S.A. 46:14-4.1). A signature in this context includes any mark made on a document:

- By a person who intends to give legal effect to the document.
- On behalf of a person, with that person's authority and to effectuate that person's intent.

(N.J.S.A. 46:14-4.2.)

Individual

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that [he/she]:

- Is named in and personally signed the attached instrument.
- Signed this instrument as [his/her] own act.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Corporation

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and [he/she] acknowledged under oath, to my satisfaction, that [he/she]:

- Signed the attached instrument as [TITLE] of [CORPORATION NAME], a corporation named in this instrument.
- Is authorized to execute the attached instrument on behalf of such corporation.
- Executed the attached instrument as the act of such corporation.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Corporation – Proof by Attesting Witness

STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

- This person is the [Secretary/Assistant Secretary] of [CORPORATION NAME], a corporation of the State of [STATE], named in the attached instrument.
- This person signed the attached instrument as the attesting witness for the proper corporate officer who is [NAME] the [President/Vice President] of such corporation.
- The said [President/Vice President] was authorized to execute the attached instrument on behalf of such corporation.
- This person witnessed the said [President/Vice President] execute the attached instrument as the act of such corporation.
- This person signed this acknowledgment to attest to the truth of these facts.

[SIGNATURE]

(Attesting Witness)

Signed and sworn to before me on

[MONTH] [DAY], [YEAR].

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Liability Company – Individual Member

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that [he/she] is the managing member of [NAME] L.L.C, a [STATE OF FORMATION] limited liability company, and that [he/she] is authorized to execute the attached instrument on behalf of [NAME] L.L.C., and that [he/she] executed the attached instrument as the act of [NAME] L.L.C.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Liability Company – LLC Member

STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], before me personally appeared [NAME], who I am satisfied is the individual who executed this instrument and, who being duly sworn by me, did depose and say that:

- [He/she] is the [TITLE] of [NAME] L.L.C., the sole managing member of [NAME] L.L.C., a [STATE OF FORMATION] limited liability company.
- [He/she] is authorized to execute this instrument on behalf of [NAME] L.L.C., the sole managing member of [NAME] L.L.C.
- [He/she] executed this instrument as the act of [NAME] L.L.C, on behalf of [NAME] L.L.C.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Individual General Partner

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that this person (or, if more than one, each person):

- Is a general partner of the limited partnership named in the attached instrument.
- Personally signed the attached instrument.

- Signed the instrument as his or her own act as such general partner on behalf of, and as the act of, such limited partnership.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Corporate General Partner
STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person acknowledged under oath, to my satisfaction, that this person:

- Signed the attached instrument as [OFFICE] of [NAME OF GENERAL PARTNER], a corporation of the State of [STATE], which is a general partner of the limited partnership named in this instrument.
- Was authorized to execute the attached instrument on behalf of such corporation.
- Executed the attached instrument as the act of such corporation on behalf of, and as the act of, such limited partnership.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Corporate General Partner – Proof by Attesting Witness
STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

- This person is the [Secretary/Assistant Secretary] of [NAME], a corporation of the State of [STATE], which is a general partner of the limited partnership named in the attached instrument.
- This person signed the attached instrument as the attesting witness for the proper corporate officer who is [NAME] the [President/Vice President] of such corporation.
- The said [President/Vice President] was authorized to execute the attached instrument on behalf of such corporation.

- This person witnessed the said [President/Vice President] execute the attached instrument as the act of such corporation on behalf of, and as the act of, such limited partnership.
- This person signed the acknowledgment to attest to the truth of these facts.

[SIGNATURE]

(Attesting Witness)

Signed and sworn to before me on

[MONTH] [DAY], [YEAR].

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Trustee

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that this person (or, if more than one, each person):

- Is the trustee of [NAME OF TRUST] named in the attached instrument.
- Personally signed the attached instrument.
- Signed this instrument as his or her own act as said trustee on behalf of, and as the act of [NAME OF TRUST.]

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Disclosures, Certifications, and Implied Uses

4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

Landlords must disclose latent defects at the premises that they may be able to remedy. Latent defects are not readily ascertainable by prospective tenants.

The tenant has no legal right to force the landlord to provide compliance certificates.

Additionally, landlords must provide information as to whether the rental property that is the subject of a lease is determined to be located in a flood zone or area ([N.J.S.A. 46:8-50](#)).

5. Is a lease deemed to include an implied warranty of fitness for intended use?

New Jersey recognizes an implied warranty:

- Against latent defects (see [Reste Reality Corp. v. Cooper](#), 251 A.2d 268 (N.J. 1969)).
- Of fitness of premises for leased purposes.

Term, Renewal, and Early Termination

6. Are there any legal restrictions which:

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

Limit on Maximum Term

There is no limit on the maximum term of a commercial lease, but a lease of 99 years or more is subject to the realty transfer fee (see [Question 10](#)).

Tenant Renewal

No statutory provision requires the landlord to allow a commercial tenant to renew its lease.

Early Termination

There is no law that allows a tenant to terminate its lease before the express expiration date. A lease may be terminated, however, before the expiration date as a result of:

- Damage due to casualty ([N.J.S.A. 46:8-6](#) and [46:8-8](#)). To the extent that the lease stipulates each party's obligations in the event of a casualty, the terms of the lease will govern.
- A condemnation or eminent domain proceeding.

7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

Advance notice requirement by the landlord to the tenant for an automatic renewal of the lease term is not required by law, but is solely governed by the terms of the lease.

Rent and Security Deposits

8. Are there any legal restrictions on:

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

Maximum Rent

There is no legal restriction on the amount of rent that may be charged for commercial, industrial, office, or retail leased space. This is a matter of contract between the parties.

Operating Expenses

There are no legal restrictions on the amount of operating expenses that may be passed through to the tenant for commercial, industrial, office, or retail leased space. This is a matter of contract between the parties.

9. For security deposits:

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

Commingling Permitted

New Jersey does not have a statute that governs security deposits for commercial leases. This is a matter of contract between the parties.

Interest Bearing Account

New Jersey does not have a statute that governs security deposits for commercial leases. This is a matter of contract between the parties.

Administrative Fees

New Jersey does not have a statute that governs security deposits for commercial leases. This is a matter of contract between the parties.

Transfer Taxes and Other Taxes

10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:

- Rate for the tax and how it is calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Rate and Calculation

Generally, no state or local transfer taxes are triggered when a lease is signed or in the later assignment of a lease. However, a realty transfer fee is due if either:

- The leasehold interest is for at least 99 years.
- There is language in the lease that allows either party to extend the lease term beyond 99 years.

([N.J.S.A. 46:15-5](#).)

Subject to certain exemptions, a realty transfer fee is calculated and payable at statutory rates based upon the consideration. For leases of 99 or more years, the consideration for purposes of calculating the realty transfer fee is the assessed value of the property for real estate tax purposes, as of the date of the lease. (See [N.J.S.A. 46:15-7](#) and [46:15-7.1](#).)

Return

An Affidavit of Consideration, setting out the consideration and identifying the property to be transferred, must be presented with the deed to be recorded ([N.J.S.A. 46:15-7.2](#)).

Timing

If due, the realty transfer fee must be paid when the lease or memorandum is presented for recording. The county clerk will not accept the document for recording without payment of the realty transfer fee. ([New Jersey Department of the Treasury, NJ Realty Transfer Fees](#).)

11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:

- Percentage of ownership interest that triggers the taxes.
- Rates for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

State and local transfer taxes are not triggered when an entity undergoes a transfer of its ownership interests solely based on the fact that the entity is a tenant under a commercial lease. There is, however, a tax on the sale or transfer of a controlling interest in any entity that has a direct or indirect interest in classified real property, if the consideration paid for the controlling interest is over \$1 million.

A taxable sale or transfer of a controlling interest may occur in one transaction or in a series of transactions. Transactions that occur within six months of each other are presumed, unless shown to the contrary, to be a series of transactions constituting a single sale or transfer.

The sale or transfer of a controlling interest may be made by one purchaser or a group of purchasers acting in concert. Purchasers who are related parties are presumed to be acting in concert. The tax does not apply to any transfer that is subject to the mansion tax imposed by [Section 46:15-7.2 of the New Jersey Statutes](#) (see [State Q&A, Real Estate Ownership: New Jersey](#)).

Percentage of Interests

"Controlling interest" means:

- For a corporation, more than 50% of the total combined voting power of all classes of stock of that corporation.
- For a partnership, association, trust, or other organization, more than 50% of the beneficial ownership of classified real property of that partnership, association, trust, or other organization.

Rate and Calculation

The tax is 1% of the consideration paid on the sale or transfer.

Returns

The entity should file a New Jersey [Controlling Interest Transfer Tax Form](#) (Form CITT-1).

Timing

The form should be filed by the last day of the month following the month in which the sale or transfer of a controlling interest is completed. Payment of the tax must accompany the return.

The penalties for late payment or failure to file tax returns include a late filing penalty of 5% per month, up to 25% total, plus interest and 10% of any amount referred to an outside collection agency representing costs of recovery.

12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.

Commercial landlords are not required to collect taxes on rent or other taxes from tenants.

Assignment, Financing, and Transfers

13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?

There are no New Jersey statutes regulating whether a tenant of a commercial lease may assign the lease or sublet the premises. Typically, a New Jersey commercial lease requires the tenant to obtain the landlord's prior written consent to any assignment of the lease or sublease of the premises and often the parties negotiate that the landlord's consent may not be unreasonably withheld. It is unclear under New Jersey case law whether a reasonableness standard would be implied if the lease is silent on whether the landlord's consent may not be unreasonably withheld.

Under New Jersey case law, a tenant may assign or sublet the leasehold interest, and may transfer the lease or leasehold interest, if the lease does not expressly stipulate the contrary (see *Berkeley Development Co. v. Great Atlantic & Pacific Tea Company*, 518 A.2d 790, 794 (N.J. Super. Ct. Law Div. 1986)).

14. If the lease does not expressly define the term "assignment" and there is no other express restriction in the lease to the contrary can the:

- Tenant's corporate ownership interests be freely transferred without the landlord's consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord's consent?

Transfer of Ownership Interests

Whether a transfer of the tenant's ownership interests would trigger the landlord's consent requirement depends on the actual language of the lease. If the lease does not define an assignment to include a transfer of ownership interests in the tenant, the ownership interest would be freely transferable.

Security Lien or Pledge of Ownership Interests

A tenant may place a lien on its leasehold interest, or pledge its corporate ownership interests in connection with a financing without the landlord's consent, unless restricted by the terms of the lease itself.

15. When a lease requires a landlord's consent for an assignment and defines the term "assignment" to include a transfer of the tenant's corporate ownership interests, would an indirect transfer of the tenant's interests trigger the landlord's consent requirement?

Whether an indirect transfer of the tenant's ownership interests would trigger the landlord's consent requirement depends on the actual language of the lease.

A New Jersey court has found that a transfer of shares of stock to another corporation does not constitute an assignment of the lease (*Posner v. Air Brakes & Equipment Corp.*, 62 A.2d 711 (N.J. Super. Ct. Ch. Div. 1948)).

16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?

Absent an express provision in the lease, the assignment of a lease does not relieve the tenant of its contractual undertakings in the lease.

17. Describe any restrictions on the landlord's ability to transfer the real property subject to the lease. Does this transfer affect the tenant's rights or obligations?

There are no express statutory restrictions on a commercial landlord's ability to transfer real property subject to a lease. There may, however, be express restrictions in the lease itself.

Remedies

18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

Implied Remedies

A New Jersey landlord may terminate the lease if the tenant:

- Fails to pay rent.
- Holds over after the expiration of the term (after demand is made by the landlord and written notice is given for delivery of possession).
- Acts in a manner that is so disorderly as to destroy the peace and quiet of the landlord or the other occupants living in the house or neighborhood.
- Wilfully destroys, damages, or injures the premises.
- Constantly violates the landlord's rules and regulations, if the rules have been accepted in writing by the tenant or are made a part of the lease.
- Commits any breach or violation of the lease, and the lease provides for a right of re-entry for a violation of the covenants or agreements (after the landlord provides written notice of the termination of the lease and demand is made for delivery of possession).

(N.J.S.A. 2A:18-53.)

On termination of the lease, a landlord may claim damages in the amount of the unpaid rent to date. There is no implied remedy that would permit the acceleration of rent for the balance of the term. Landlords may sue periodically as the unpaid rent is fixed. Many landlords obtain possession of the premises and wait until the premises are re-let so that they may fix their damages and sue to collect.

Self-Help

Self-help is not a favored remedy in New Jersey. Commercial landlords have been cautioned against using self-help. Landlords cannot use force in exercising self-help. In the event of an unlawful distraint, a landlord may be liable for treble damages.

Eviction Proceeding

Landlords can bring a summary dispossession action in the Landlord/Tenant Section of the Special Civil Part in the Superior Court Law Division. In cases of non-monetary default, the landlord must send the tenant a notice to quit the premises and demand for possession before taking action.

The trial date is between ten and 30 days from the date of service of the complaint.

If the landlord prevails, a judgment for possession is entered and enforced by the issuance of a warrant for removal. The landlord must file a written application for the warrant of removal within 30 days of the entry of the judgment. The 30 day period may be extended by court order or agreement of the parties filed with the clerk. ([N.J.S.A. 2A:18-57](#); [N.J. R Law Div. Civ. Pt. R., 6:7-1.](#))

Expedited Remedies

Summary dispossession is an expedited proceeding ([N.J.S.A. 2A:18-53](#); [Hodges v. Sasil Corp.](#), 915 A.2d 1, 7 (N.J. 2007)). A landlord may also file an order to show cause to permit distraint of the tenant's property.

Mitigation of Damages

New Jersey courts have held that a landlord is obligated to mitigate damages, even if the lease does not include an express requirement for mitigation of damages ([McGuire v. City of Jersey City](#), 125 N.J. 310, 316 (1991)).

Automatic Termination of a Lease in a Foreclosure Action

19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?

Generally, a commercial tenant's leasehold interest is not automatically terminated after completion of a foreclosure of the property, unless the foreclosing lender both:

- Includes the tenant as a named party defendant in the foreclosure action.
- Properly serves the tenant in accordance with all applicable statutes and court rules.

A tenant may have different rights, however, depending on a variety of factual issues, including whether the:

- Lease was made before or after a default or the filing of a [lis pendens](#) with respect to the subject loan, or both.
- Tenant entered into a [subordination, non-disturbance and attornment agreement](#) (SNDA) with the foreclosing lender.
- Lease contains specific language regarding the subordination of its terms to any current or future financing.
- Lease (or a memorandum of lease) is recorded before the recordation of the foreclosing lien.

The best way to avoid termination of a subordinated lease is for the tenant to enter into an SNDA with the current and future mortgagees of the property.