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# PROPERTY MANAGEMENT AGREEMENT & GUIDE

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## 1. Overview

You've found the building. You've made your investment. Now it's time to put your asset to work. If you don't have the time or experience to manage your own rental property, it can be a smart and profitable idea to hire a property manager to perform these tasks. A property manager (sometimes called a real estate manager) is a person or company that oversees the performance of your income-producing property, ensuring that your investment provides you with maximum revenue and minimum headache.

A property manager can take on many responsibilities, including marketing open units, leasing apartments, maintaining and improving the property, collecting rent, negotiating agreements, addressing tenant problems and much, much more. The enclosed document can provide a good starting point for your property management arrangement. You and the manager must continue to discuss the terms of your agreement, settling questions about work parameters, payment, and responsibilities. Once you have agreed on contract terms and have signed the attached form, each party can focus on its area of expertise—the owner on the development of its business and the manager on the tasks assigned.

## 2. Dos & Don'ts Checklist

- Most states require that property managers have either a property management license or a real estate license. These rules vary from state to state and from management type to management type (e.g., property vs. association). Unfortunately, there is no national clearinghouse for confirming these registrations and no single way to check across the country. Search on the internet for the term "real estate commission" and the name of your state. The links that come up should allow you to confirm that the company or individual you're considering is licensed.
- The property manager is an agent of the owner, and is therefore subject to all of the legal obligations generally imposed on agents (in addition to those specifically included in the contract). These include good faith and loyalty to the owner, performance of all duties with skill, care, and due diligence, full disclosure of all important details, avoidance of commingling of funds, and refraining from personal profits without the owner's full knowledge and consent. The manager must also be familiar with laws concerning real estate licensing, contracts, agency, fair housing, employment, property protection, and tenant/landlord relationships.
- It's a good idea for the property owner to execute a special power of attorney in favor of the manager. This may be required if the manager will be signing leases or other contracts on the owner's behalf.
- Commercial properties will have different considerations than residential ones. Residential tenants have many more rights, and fewer obligations, than commercial tenants, and this will factor into how your property can be run. Consider adapting the enclosed agreement to suit the type of property that is being managed.
- Talk to your tax professional about deducting the cost of property management from the income you're earning on the property.

- Allow each party to spend time reviewing the agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.
- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- Sign two copies of the agreement, one for you and one for the other party.
- Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.
- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- 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. Property Management Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your property management agreement.

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 property management agreement. Write in the date on which the agreement will become effective (often the date on which it is signed). Identify the parties and, if applicable, what type of organization they are. Note that each party is given a name (e.g., "Owner") that will be used throughout the agreement. The owner of the property is called the "Owner" and the manager is called the "Manager."

If the property is owned by a partnership, each partner's name should be stated in the Agreement, and each should sign the document. If the property is owned by a corporation, the corporate name should appear on the Agreement and (where required) the corporate seal should be on the document as well.

- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this agreement, the recitals include a simple statement of your intent to enter into a property management arrangement.

Describe the property that is being managed. 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.

- **Section 1: Appointment; Acceptance.** The Owner’s appointment of the Manager (and the Manager’s acceptance of that appointment) as manager of the Property. This provides the framework for the Manager’s work in managing and otherwise overseeing the Property.
- **Section 2: Manager’s Authority; Obligations.** Lists the Manager’s rights and responsibilities under the Agreement.
  - (a) Authority. A list of tasks that the Manager is specifically permitted by the Owner to do. Note that this list is not necessarily exhaustive or necessary. The following provides a broad range of ideas, some of which may not be relevant to your arrangement or your local rules.
    1. Collect rent and forward it to creditors or the Owner.
    2. Deposit money. Note that some states require the manager to maintain at least one trust account in which to deposit money collected from various sources. Enter the name of the state in which the Property is located in the blank space provided.
    3. Give back security deposits at the end of a tenancy.
    4. Give notice to (and demand payment from) tenants who are late in their rent that they are violating their lease agreement.
    5. Start legal proceedings against a tenant or his property to collect unpaid rent. Note that the Owner must be notified of the Manager’s intent to do this. There is an optional bracketed phrase that allows for an exception for dire circumstances (i.e., if the Manager has to act immediately, he doesn’t need to get the Owner’s permission beforehand), but this is not a requirement.
    6. Buy all necessary materials to operate the Property.
    7. Repair or maintain the Property. Generally, the Manager is given leeway in this regard, but if the repair will cost more than a certain amount, the Owner has the right to be informed. Enter the amount over which the Owner must be notified of the spending.
    8. Hire employees.
    9. Advertise the Property and any vacant apartments. This section also allows the Owner to put a cap on the amount the Manager can spend without prior approval.
    10. Review prospective tenants.
    11. Sign leases on the Owner’s behalf. If there are specific types of leases that the Manager may not enter into (e.g., more than 4 years, less than one week), enter those numbers in the blanks provided.
    12. End leases and give tenants notice of that termination.
    13. Put a box for rent payments on the Property
    14. Make copies of keys to make it easier to show the Property to prospective tenants.
    15. Provide information about lead paint and other hazards. This is an optional provision, required in some states.
    16. Raise or lower the rent to persuade someone to rent a unit.

17. A catch-all phrase, which allows the Manager the ability to do other required tasks necessary to manage the Property.
  18. Use this space to include any additional powers you want the Manager to have.
- (b) Obligations. This is the other side of the managerial coin. In addition to the things that the Manager can do, there are also things he or she must do.
1. Use due diligence in performing his or her tasks. This is a key element of all managerial contracts.
  2. Try to rent out the Property.
  3. Maintain and manage the Property.
  4. Keep good records.
  5. Provide itemized statements of the Property to the Owner, including amounts earned and money spent. Write in how often you want these reports to be made.
  6. Pay any money that's not deposited to the Owner.
  7. Maintain whatever license (property management, general real estate, etc.) is required by state law.
  8. Use this space to include any additional obligations that you want the Manager to have.

• **Section 3: Owner's Obligations.** The Owner's required tasks.

- (a) Give copies of all relevant information to the Manager.
- (b) This is an optional provision, relevant only if the Manager will be making payments for loan, tax, and insurance obligations on behalf of the Owner. If this doesn't describe your arrangement, the Manager will not need copies of documents needed to pay these bills. If this does describe your agreement, you will not need to include subsection (c) below.
- (c) This is an optional provision, in which the Owner is agreeing to make all of the tax payments, etc. on the Property. If the Owner is agreeing to do this, you will not need to include subsection (b) above.
- (d) Help the Manager in any way possible to fulfill its obligations.
- (e) Provide any further documents to the Manager that it may need.
- (f) Tell the Manager if he is going to sell the Property. Note the Manager's consent is not required.
- (g) Determine what kind of insurance is necessary for the Property, and get and pay for that insurance.
- (h) Reimburse the Manager for any payments it makes out-of-pocket to pay for advertising or other managerial tasks.
- (i) Pay any fees that the Manager incurs because the Owner didn't provide the Manager with sufficient funds to pay for Property-related bills.
- (j) Use this space to include any additional obligations that you want the Owner to have.

- **Section 4: Reimbursement of Expenses.** Allows the parties to specify which expenses the Manager will be reimbursed for. If there are additional items that the Owner will pay for, enter those in the space provided.

- **Section 5: Term.**

- (a) Allows you to specify how long you want the first term of the Agreement to last. By calling it the “Initial Term,” you are not obligating yourself to any additional terms – it may be the only one. Enter the number of years you want the Initial Term to last.
- (b) This Agreement will automatically renew itself unless the Parties take action, but not for the equivalent of the Initial Term. Instead, the Agreement will renew on a monthly basis until one of the Parties gives notice of its desire to end it. Enter the number of days advance notice that the Parties must give to end the Agreement.

- **Section 6: Compensation.**

- (a) The fees that will be charged for the management of a property will vary depending on the size of the property, its location, and the management needs of the building. The two most common arrangements are flat fee and percentage fee, and examples of each have been provided. Choose only one of these alternatives and delete the other.

- Flat Fee (or Fixed Fee): This is covered by the first bracketed clause. A flat fee arrangement, in which a set amount will be paid to the manager on a regular basis, is most appropriate in the management of a condominium or cooperative complex.
- Percentage Fee: This is offered in the second bracketed clause. Under percentage fee arrangements, managers are compensated by payments of some fraction of the rental income from the property. This serves as an excellent incentive for the manager to increase the income of the building. Some contracts call for a minimum amount per unit or account to ensure a consistent (or relatively steady) income stream for the manager. If this fits your arrangement, enter a minimum amount that the manager will be paid.

Consider that larger complexes and smaller complexes may take the same time and effort to manage. To account for this, owners sometimes set management percentages at higher rates in smaller properties than in large ones.

Make sure that both parties agree on everything that will be included in this percentage fee and (if applicable) everything that will cost extra.

- (b) (Optional) Additional Fees. This is an optional section that allows you to designate additional fees for other activities. For example, some management agreements allow the owner to provide an additional fee to the manager for the signing of a new lease, or a bonus for reaching a pre-set goal. The terms of this subsection require the Parties to agree on the terms at a later date. If you want to establish the terms of these additional fees immediately, feel free to add those here.

- **Section 7: Liabilities and Indemnification.** The Owner’s promise to bear the financial cost of any injury the Manager suffers as a result of its management, and any lawsuits that may arise from those activities.

- **Section 8: Representations and Warranties.** Details the parties' promises under the Agreement. Each party is agreeing to enter into the arrangement based on the conditions listed in this section (e.g., that each is capable of entering the agreement and satisfying its terms). Although each of these is important, one to note particularly is subsection 8(b)(8), in which the Owner is obliged to disclose any condition on the Property that could affect the health and/or safety of a tenant. If there are no such conditions, you can delete the bracketed part of the sentence.
- **Section 9: Termination.** Explains that certain actions or events, including written notice or material breach, will cause the agreement to end out of time (i.e., before the services are completed or the end of the term, if any).
  - (a) Termination Procedures. Write in the amount of notice a party must give of its intent to terminate or to notify the other of a breach.
  - (b) Management Fees After Termination. Provides that the Manager will be paid for its pre-termination services after the Agreement is ended.
  - (c) Funds Received by Manager After Termination. After the end of the Agreement, the Manager is still bound by its duty to return any funds received (e.g., rent or security deposit refunds) to the Owner.
  - (d) Owner Responsible for Further Payments. Notes that the Owner will take over all of the Manager's payment and other obligations after the termination. In other words, the Manager will no longer be responsible for paying bills or addressing tenant concerns.
- **Section 10: Additional Agreement Terms.** If there are additional terms you'd like to add to the form, enter those in the space provided. Use this area to include items that you consider important, no matter how trivial you think they are. If you do not wish to include any additional requirements, delete this section. If you do remove the provision, correct the section numbers and references in the agreement.
- **Section 11: Indemnification.** Provides that if problems arise in the future and lawsuits are brought based on the Manager's work as manager, the Owner will pay for all legal fees and any related damages.
- **Section 12: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both Parties.
- **Section 13: Assignment.** Explains that each Party must obtain the other's written permission before assigning its obligations and interests.
- **Section 14: Successors and Assigns.** States that the Parties' rights and obligations will be passed on to heirs or, in the case of companies, successor organizations or organizations to which rights and obligations have been permissibly assigned.
- **Section 15: No Implied Waiver.** Explains that if either Party allows the other to ignore or break an obligation under the agreement, it does not mean that Party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 16: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Owner and the Manager.

- **Section 17: 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.
- **Section 18: 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 Agreement 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 19: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire document. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 20: 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.
- **Section 21: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

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**SAMPLE PROPERTY MANAGEMENT AGREEMENT**

This Property Management Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_ [individual/corporation/partnership/etc.] (the "Owner"), and \_\_\_\_\_, a \_\_\_\_\_ [corporation/partnership/etc.] (the "Manager," and together with the Owner, the "Parties").

**RECITALS**

**WHEREAS**, the Owner is the owner of that certain apartment building located at \_\_\_\_\_  
\_\_\_\_\_  
(the "Property"); and

**WHEREAS**, the Owner wishes to engage the Manager as manager of the Property on the terms and conditions set forth below; and

**WHEREAS**, the Manager wishes to provide the management services (as defined below) in accordance with the terms of this Agreement; and

**WHEREAS**, each Party is duly authorized and capable of entering into this Agreement.

**NOW THEREFORE**, in consideration of the above recited promises and benefits contained herein, the Parties agree as follows:

1.