LANDLORD CONSENT TO SUBLEASE & GUIDE

Included:

Overview

Dos and Don'ts Checklist

Landlord Consent to Sublease Instructions

Sample Landlord Consent to Sublease

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1. Overview

Many contracts include provisions indicating that they (and the responsibilities that accompany them) cannot be subleased without the written permission of one or both parties. In most lease agreements, for example, tenants are not permitted to sublease 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 sublease of his or her interest. Successful property management begins with good documentation, and a properly-drafted and executed consent will start your new rental relationship off on the right foot.

2. Dos & Don'ts Checklist

- ☐ An assignment is a complete transfer of one party's interest in an agreement to a third party. In this case, the tenant is giving all of his or her interest to someone else. That third party steps into the shoes of your tenant, and your 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 the specific rights provided in the sublease. The original tenant still remains ultimately liable for residual obligations under the lease, or any failures of the third party to follow the agreement. This means the original tenant will be responsible (in equal measure with the new tenant) for any skipped rent payments or damage to the property.

- ☐ A sublease may be for all or a part of the rented property.

- ☐ The tenant can only allow the subtenant to use the property for purposes stated in the original lease. In other words, the tenant can only transfer the rights that it had in the first place. If the subtenant is intending to use the property for a new use that was not contemplated by the original lease, the landlord must give express consent to this new use.

- ☐ Although you are not required to consent to the sublease, 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 for additional information.

- ☐ When deciding whether or not to consent to the sublease, consider only proper factors. Some criteria will be considered impermissible by courts (e.g., refusal is based on race or sex of the proposed subtenant). 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.

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- [ ] It's a good idea to create a standardized policy and procedure for responding to sublease 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 new tenant's finances and his or her planned uses of the property. The letter should also inform your current 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 sublease 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 governing lease and your state's laws for additional details.

- [ ] In face of tenant opposition to a refusal, be cautious about terminating the lease or evicting the tenant. If the refusal was wrongful, these steps might compound your liability.

- [ ] The enclosed document does not constitute the sublease itself. A separate document subleasing your tenant's obligations must be completed by your tenant and the third party to whom his or her interests are being subleased.

3. Landlord Consent to Sublease 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 sublease of a lease agreement. 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 they are. Note that each party is given a name (e.g., "Landlord") that will be used throughout the agreement. The lessor of the property is called the "Landlord" and the tenant is called the "Tenant."
- **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 sublease 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 subleased. Attach a copy of the Lease to the consent as Exhibit A.
- **Section 1: Consent to Sublease.** The Landlord's consent to the sublease of the Tenant's interest in the Lease. Attach a copy of the proposed sublease form as Exhibit B to the consent.
- **Section 2: Continuing Liability of Tenant.** Provides that the Tenant remains ultimately responsible for his or her duties under the Lease. The Landlord can seek rent payments either from the Tenant or from the Subtenant, in any order.
- **Section 3: Continuing Effectiveness of Lease.** Emphasizes that except for the sublease, the original terms of the Lease are still effective.

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- **Section 4: Monthly Basic Rent.** A statement that the amount the Subtenant is paying is not more than the rent required of the Tenant under the original Lease.
- **Section 5: Sublease Subordinate to Lease; Consent.** Emphasizes that the original Lease is still the controlling document governing the landlord/tenant relationship. In other words, the Tenant and the Subtenant can't change the terms through their own separate agreement.
- **(Optional) Section 6: Additional Terms of Sublease.** An optional provision allowing the Landlord and the Tenant 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 Subtenant. If you remove this section, correct the section numbers and the references in the document.
- **Section 7: Interpretation.** Provides that both parties are on equal footing in the negotiation of the consent to 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 8: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both parties.
- **Section 9: 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 10: 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 11: 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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Form Sample

LANDLORD'S CONSENT TO SUBLEASE

This Landlord's Consent to Sublease (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 "Tenant"). The Landlord and the Tenant 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 Tenant, 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 Tenant wishes to sublease [all][a portion] of its rights and obligations as lessee under the Lease to _____ (the "Subtenant"), and the Subtenant wishes to accept this sublease 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 sublease on the te
conditions set forth in this Consent.

NOW THEREFORE, in consideration
and benefits contained herein, th

SAMPLE

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