



TERMINATION OF LEASE AGREEMENT & GUIDE

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1. Overview

The end of a lease is as important as its beginning. A change in business climate or in the parties' goals may signal that it's time to terminate the lease and release the parties from their duties. A clean break will provide peace of mind, discharge all obligations, and lead to an amicable conclusion.

A termination is the definitive end of the parties' commitments under the lease. If well-drafted, it can help prevent future misunderstandings and disputes. Although no document can insulate you from later lawsuits or claims, a clear termination and release can strengthen your defense if such claims arise.

Note that the termination of a lease is not the end of a relationship. It may open avenues of discussion with the other party that might otherwise have been closed. You can review your mutual expectations and concerns, assess the venture's successes and failures, and lay the groundwork for future agreements and interactions. A thorough evaluation of each party's performance allows for a better understanding of what will be required on termination and can help the parties in all their future dealings.

2. Dos & Don'ts Checklist

- A landlord and tenant can mutually agree to end a lease arrangement at any time. If you have a written lease, the termination of that lease must also be in writing. Even if you do not have a written lease agreement, putting the termination in writing will protect both parties. The termination should also specify when all of the lease liabilities will end and the date on which the tenant will lease the premises, and be signed by both parties to be valid.
- A tenant can almost always break its lease, even if the landlord makes statements to the contrary. It may have to pay rent until a new tenant is found, but it will not remain responsible for the apartment itself.
- If you are a landlord, make sure that your procedures for allowing mid-term termination of a lease are clear and consistent. Consider drafting a procedures manual for use on your properties, and apply its terms equally among your tenants. Failure to do so could result in charges of discrimination and later lawsuits.
- Your lease may require the tenant to make a payment (or a fee) for early termination. However, this amount can't be more than the landlord's actual and reasonable loss that occurred as a result of the termination (e.g., lost rent, advertising costs, etc.). If the tenant pays a fee in connection with the lease termination, and the property is rented immediately thereafter with no corresponding costs, the tenant is entitled to a refund of that entire fee.
- Be clear about the disposition of money in your agreement. There are several options provided in the enclosed termination, and you and the other party should discuss which best applies to your arrangement. To ensure a clean break with few misunderstandings, address issues of the security deposit, last month's rent, and any other monetary sums before signing the termination.

- Make sure you have performed all of your contractual duties before signing a termination. Once the termination is signed, your original lease is void. Review the lease and draft a list of each party's obligations and rights. Take a moment to ensure that your interests have been satisfied.
- Allow each party to spend time reviewing both the lease and the termination. 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 their rights and obligations.
- Both parties should review the termination 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 on the document.
- The terms of your original lease are still in effect, so make sure both parties continue to perform their obligations under that agreement until the termination is completed and signed.
- Sign two copies of the termination, one for you and one for the other party.
- Keep your copy of the signed termination with the lease. Once the termination has been drafted and signed, it is the concluding part of that agreement and should be treated accordingly.
- Depending on the nature of its terms, you may decide to have your termination witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If the lease or the conditions of your termination are complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Termination of Lease Agreement Instructions

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

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

- **Introduction.** Identifies the document as the termination of an existing lease. Write in the parties and the date on which you want the termination to be effective. The parties must be the same as those who signed the original agreement (unless one of the new signers is an agent of the same company that originally signed) and should have the same designations as well (i.e., the Landlord is still the Landlord, the Tenant is still the Tenant).
- **Recitals.** Identifies the document as the termination of an existing Lease and explains where your right to terminate the document comes from. Put in the effective date of the Lease and the section (or paragraph) number of the Lease that allows you to terminate it. The title of this section is usually "Termination" or "Term and Termination." Note that the recitals require that you attach a signed copy of the Lease as an exhibit to the Termination.

There is a bracketed phrase in the sentence that begins “Now, therefore...” Include this phrase if you and the other party have agreed that the Tenant will pay money to the Landlord as part of the termination process. There will be additional information about this possibility below.

- **Section 1: Termination.** Explains that both Parties want to terminate the Lease. This section also acknowledges that if there are any ongoing obligations (for example, a duty to protect the other Party’s confidential information), those will survive the termination.
- **Section 2: Compliance with Obligations or Termination Fee.** There are two options provided here, and you should select the one that best suits your arrangement. Delete the paragraph that you do not choose. Note that you will need to change the title of this section depending on which option you pick.

In the first (titled “Compliance with Obligations”), the language indicates that even after the Termination is signed, the Tenant remains responsible for any rent payments or other obligations that arose before the Termination Date. If there are charges against the Premises that date back to before the Termination Date, the Tenant will be responsible for those as well.

The second option (titled “Termination Fee”) provides for a one-time payment of a specified amount to satisfy all of the Tenant’s remaining (and future) obligations relating to the Lease or the Premises. Enter the amount of the payment that will be made by the Tenant. The last bracketed part of this paragraph is optional, and states that if the Tenant stays on the Premises after the Termination Date, it will be responsible for additional rent payments for that occupation. In other words, the one-time payment would not be sufficient to cover this obligation. Delete this phrase if it does not suit your agreement.

- **Section 3: Yield Up.** The Tenant’s promise to be off of the Premises by the end of the Termination Date and to leave the Premises in the condition required under the Lease. The last phrase of the section is bracketed, and may be adapted depending on the terms of your Lease. Review the Lease provisions. Do they say anything about how the property must be returned (e.g., “broom clean condition,” etc.)? If so, you can copy that language into this section to reiterate this agreement.
- **Section 4: Security Deposit.** Describes how the Tenant’s security deposit will be distributed. There are two options provided. The first should only be selected if you chose the second option in Section 2 (i.e., “Termination Fee”). This provides that the amount the Tenant deposited initially under the Lease will be subtracted from the total amount the Tenant owes as a termination fee. In other words, the Tenant will have to pay a lesser fee based on the money it already paid.

The second option is more general, and indicates that the security deposit will be returned as specified in the Lease and the law generally. Review the terms of your Lease for additional information about these procedures.

- **Section 5: Mutual Release of Liability.** Discharges all liabilities that could arise from the original agreement. In other words, both Parties agree not to sue each other for any unfinished obligations or fees. This section has a big impact. You are eliminating your ability to claim that you are still owed something under the original Lease (and the other Party makes the equivalent promise). Unfortunately, the inclusion of this provision will not prevent a Party from arguing that enforceable promises still exist, but it may provide you some protection from these claims.

Note that there are some optional exceptions carved out for damage to the Premises that is not immediately visible or ascertainable and for third party lawsuits that are brought against the Landlord for the Tenant's use of the Premises. Delete this sentence if you do not want these to be exceptions to the general release.

- **Section 6: Knowing Release.** Indicates that each Party had the ability to seek attorneys to advise them about the Termination, and that each is entering into the Termination of its own free will.
- **Section 7: Return of Property (Optional).** Although it may seem obvious to you that the Tenant should return the Landlord's property after termination, it's a good idea to spell it out in the document. This section requires the Tenant to return the Landlord's property, and makes it responsible for the condition of that property. Space is provided for you to designate a time frame within which the property must be sent back. If you remove this section, correct the section numbers and references in the document.
- **Section 8: Tenant's Representations and Warranties.** Details the Tenant's promises under the Termination. These items, for the most part, state that the Tenant still holds its entire interest under the Lease. In other words, it swears that the Tenant has not assigned or subleased the Premises, or entered into contracts with third parties that relate to the Premises.
- **Section 9: Confidential Information (Optional).** This serves largely as a reminder to the Parties that confidential information must remain confidential, even after the Termination Date. Review this section closely to make sure it provides sufficient security for you or your company and its proprietary information. If you remove this section, correct the section numbers and references in the agreement.
- **Section 10: Non-Disparagement (Optional).** The Parties' agreement that neither will do or say anything to damage the other's commercial reputation. This section is usually relevant only if the lease being terminated is commercial and not residential. If you remove this section, correct the section numbers and references in the agreement.
- **Section 11: Additional Conditions (Optional).** An optional provision that allows you and the other Party to place conditions on the lease termination. In other words, either of you can require the other to complete certain tasks or reach certain goals before the Termination will become effective (e.g., professional cleaning of the space, locating a new tenant, etc.). If you remove this section, correct the section numbers and references in the agreement.
- **Section 12: Covenant Not To Sue.** Promises that neither Party will bring a lawsuit against the other based on claims specifically released by this Termination. Again, the inclusion of this provision will not prevent all such lawsuits, but it will provide you some protection from those filings.
- **Section 13: Governing Law.** Your Lease probably includes a choice-of-law provision that selects the laws that will be used to interpret its terms. If it does not, this section allows you to choose those laws. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write the applicable state in the blank provided.

- **Section 14: 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 Termination 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 document. 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.
- **Section 15: Severability.** Protects the terms of the Termination 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 Termination enforceable.
- **Section 16: Entire Agreement.** The Parties' agreement that the Termination they're signing (when taken together with the 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.
- **Section 17: Authority.** A promise that the Parties signing the Termination have the right and power to do so.
- **Section 18: 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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TERMINATION OF LEASE AGREEMENT

This Termination of Lease Agreement (the "Termination") is entered into as of _____, 20__ (the "Termination Date") by and between _____ (the "Landlord") and _____ (the "Tenant") (collectively the "Parties").

RECITALS

WHEREAS, the Parties have entered into that certain lease agreement, dated as of _____, 20__ (the "Lease"), pertaining to the premises _____ (the "Premises"). A copy of the Lease is attached as Exhibit A hereto and made a part hereof by reference; and

WHEREAS, pursuant to Section _____ of the Lease relating to terminations thereof, the Parties hereby desire to terminate the Lease with effect and as of the Termination Date.

NOW THEREFORE, in consideration of the above recitals and the mutual benefits contained herein, [and in further consideration of the payment by the Tenant to the Landlord of the sums as hereinafter provided,] the receipt and sufficiency of which consideration are hereby acknowledged, the Parties hereby agree as follows:

1. TERMINATION.

Subject to the terms and conditions of this Termination of Lease Agreement, the Parties hereby agree to terminate the Lease, effective as of the Termination Date, and the Tenant shall not be further bound by the Lease.