

**MODEL LEASE  
CLAUSE**

# Get Right to Take Back Space from Small Tenant

**G**etting an early lease termination option gives landlords flexibility to lease vacant space to a smaller tenant while continuing to pursue big tenants to occupy it for the long haul. However, tenants will demand compensation for agreeing to let you terminate them to make way for the larger tenant. So, it's essential to create a special lease clause that's fair and provides legal protections for both sides. Here's a Model Lease Clause created and used successfully by a veteran New Jersey landlord attorney that you, with the help of counsel, can adapt for your own needs and situation.

## LANDLORD'S TERMINATION OPTION

**a. Termination Option.** Landlord and Tenant acknowledge and agree that:

- (i) Landlord shall have the option to terminate this Lease effective as of the Termination Date (as that term is defined below);
- (ii) For purposes of this Clause, the "Termination Date" means the last day of any calendar month within the Term (or any extension thereof) as selected by Landlord, in its sole and absolute discretion;
- (iii) To exercise its termination option, Landlord shall give Tenant written notice of the Termination Date (the "Termination Notice") at least *[insert #, e.g., 30]* days prior to the Termination Date;
- (iv) Effective as of the Termination Date, Tenant's interest in and to the Premises shall be wholly extinguished and this Lease shall expire in the same manner and with the same effect as if the Termination Date were the Expiration Date; and
- (v) Landlord's exercise of its termination option shall not constitute a release or discharge of Tenant with respect to any outstanding, and unsatisfied, or continuing obligations or liabilities, whether unbilled or calculated, accrued or incurred, applicable to the Premises, such as, but not limited to, Rent and other charges payable by Tenant up to and including the Termination Date, and Tenant's obligation to indemnify Landlord under Clause *[insert lease section #]* hereof.

**b. Surrender of Premises.** Landlord and Tenant further acknowledge and agree that:

- (i) In the event that the Actual Surrender Date (as defined below) fails to occur on or before the Termination Date, Tenant, rather than paying the Holdover Rent required under *[insert lease section # of standard holdover rent clause]* hereof, shall pay *[insert multiple, e.g., double]* the Minimum Rent applicable to the Premises for each day between the Termination Date and the Actual Surrender Date;
- (ii) For purposes of this Clause, the "Actual Surrender Date" means the first day on which all of the following three conditions are fully satisfied, as determined by Landlord in its sole and absolute discretion:
  - (A) Tenant has cured all outstanding defaults, if any, under this Lease;
  - (B) Tenant has quit, surrendered, and delivered to Landlord actual and exclusive possession of the Premises; and
  - (C) The Premises are empty, vacant, broom clean, in good condition and order, and free of all occupants, liens, and property required to be removed under this Lease at the end of the Term or any extension thereof;
- (iii) Tenant understands that on the Termination Date, all or a part of the Premises may be subject to certain rights of occupancy held by other parties and that any retention of possession by Tenant after the Termination Date may cause significant hardship to Landlord and to such other occupants. In connection with the foregoing, Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, claims, and expenses incurred by reason of any such retention of possession;

**LANDLORD'S TERMINATION OPTION (CONTINUED)**

- (iv) Nothing contained in this Clause shall be construed as a consent by Landlord to the occupancy or possession by Tenant of the Premises beyond the Termination Date. Landlord, upon the Termination Date, shall be entitled to consequential damages and to the benefit of all legal remedies that now may be in force or may be hereafter enacted that enable Landlord to regain possession of the Premises.
- c. Compensation from Landlord.** In the event that the Actual Surrender Date occurs on or before the Termination Date, then, Landlord shall give Tenant within [*insert #, e.g., 30*] days after the Actual Surrender Date, a check equal to the product of:
  - (i) [*insert #, e.g., 12*]; and
  - (ii) The monthly installment of Minimum Rent due on the first day of the month in which Landlord gives Tenant the Notice.