

MODEL LEASE CLAUSE

Set Limits on Tenant's Resort to Yellowstone Injunction

Yellowstone Injunctions extending the cure period for tenant lease defaults can tie you up in knots and compromise the enforceability of your lease. The most straightforward way to take the Yellowstone Injunction out of play is to provide no cure period for lease infractions. But that's something few tenants are willing to accept. That's why you need a fallback—namely, a provision waiving tenants' Yellowstone rights. The next line of defense is to set limits on Yellowstone actions in the event that the waiver proves unenforceable or the tenant refuses to accept it. The following lease clause comes from New York real estate attorney Adam Leitman Bailey. Talk to your attorney about adapting it for your own situation and state's law.

YELLOWSTONE INJUNCTION IN EVENT OF TENANT DEFAULT

- 1. Waiver of Yellowstone Rights:** Landlord and Tenant, after due consideration and arms' length negotiation, and being fully advised by their respective counsel, hereby agree that the cure period for any event of default under this Lease shall not be the subject of any application or motion by the Tenant to a Court of law for a so-called "Yellowstone" injunction to enjoin Landlord from maintaining a summary proceeding against Tenant, and Tenant hereby expressly and knowingly waives and relinquishes all rights it might otherwise have to seek a "Yellowstone" injunction or other comparable equitable relief, if and when Landlord should have occasion to issue a Notice of Default and/or a Notice to Cure under the terms of this Lease after any Event of Default, as defined in this Lease.
- 2. Limits on Yellowstone Actions that May Take Place:** In the event that a Court of law should (i) declare any part of this "Yellowstone Injunction" provision null and void; (ii) issue a "Yellowstone" injunction or other comparable equitable relief in contravention of Section 1 above; or (iii) issue any other order inconsistent with Section 1 above, which results in a plenary proceeding to adjudicate whether an Event of Default has occurred under this Lease, then Landlord and Tenant hereby further agree that:
 - (a) Tenant shall make current all of its Rent and/or Additional Rent obligations then due under this Lease;
 - (b) Tenant shall secure a bond in the amount of no less than One (1) Million (\$1,000,000.00);
 - (c) Both parties shall cooperate in seeking to have said plenary action placed on an expedited court schedule for the purpose of obtaining an early pretrial hearing of the case;
 - (d) Discovery in any such plenary action shall be limited to (i) production of copies of the Lease, any correspondence between the parties, and any other written, photographic, video, and/or electronic evidence, and any expert reports and exhibits, relating to the claimed Event of Default, and (ii) no more than three depositions of party and/or non-party witnesses representing the Landlord's interests and no more than three depositions of party and/or nonparty witnesses representing the Tenant's interests; and
 - (e) Tenant, within the time specified in this Lease for the payment of its monthly rent, shall pay all Rent and/or Additional Rent due each month, during the pendency of such plenary action.