

MODEL LEASE CLAUSE

Limit Cancellation Fee Commission in Brokerage Agreement

When negotiating with real estate brokers, try to exclude tenant lease cancellation fees from rental payments on which commission is due. If the broker doesn't bite, negotiate for a compromise that fairly limits how much of the cancellation fee is subject to commissions. Here's a model clause, which comes from a New York attorney, that you can ask your attorney to adapt for your own use.

CANCELLATION FEE

Where Tenant shall be required pursuant to the Lease to pay Landlord a fee or other payment in order to effect a cancellation of the Lease following its commencement (a "Cancellation Fee"), the Excess Amount (as defined below) shall be deemed to be the base rent in the year in which the Cancellation Fee shall be collected by Landlord, and the commission shall be computed to include the Excess Amount. For the purposes hereof:

- a. The term "Transaction Costs" shall mean any and all costs incurred by Landlord to consummate the Lease, including, without limitation, brokerage and legal fees, rent credits, work contributions; and
- b. The term "Excess Amount" shall mean the portion of the Cancellation Fee that exceeds the amount of Transaction Costs not repaid to Landlord as part of the base rent, assuming an amortization of the Transaction Costs on a straight-line basis over the entire Lease term.