

MODEL LEASE CLAUSE

Include Comprehensive Insurance Waiver

Saddling tenants with massive insurance duties won't necessarily protect landlords against fires and other casualties that occur on the property; similarly, expecting landlords to shoulder the entire insurance burden may not offer adequate protection for tenants. Instead, both sides need to work together to shift risks, not to each other, but to the insurance company. Here's a clause that can serve as a starting point. It requires both parties to get its insurer to allow waiver of claims or provide a waiver of subrogation in their respective insurance policies. It also provides for both sides to give their own waiver of subrogation and waiver of claims. Speak to your attorney about adapting the clause to fit your own situation and needs.

WAIVER OF CLAIMS AND SUBROGATION

1. To the extent obtainable, all insurance policies (other than workers' compensation insurance) that Tenant must carry under this Lease shall contain one of the following provisions and/or endorsements (Waiver Provision): (i) an express waiver of any right of subrogation by the insurance company against Landlord and its agents and employees; or (ii) a statement that the policy shall not be invalidated in the event the insured waives in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies.
2. To the extent obtainable, Landlord's property insurance policy covering the Building shall also contain a Waiver Provision.
3. Each party shall use diligent efforts to obtain a Waiver Provision from its insurer without thereby invalidating its insurance or adversely affecting its right to proceeds payable thereunder.
4. Landlord and Tenant each hereby waive all claims for recovery against the other, to the extent that such claims are recoverable under valid and collectible insurance policies, provided that the relevant insurance policies will not be invalidated and that no right to collect proceeds payable under such policy will be adversely affected by the foregoing waiver. To the same extent, and on the same conditions, Landlord and Tenant each hereby waive any right of subrogation that might otherwise exist in or accrue to any person on account of such claims.