

Real Estate Leasing: New Jersey

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Status: **Law stated as of 19 Jan 2024** | Jurisdiction: **New Jersey, United States**

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A Q&A guide to commercial real estate leasing law for landlords and tenants in New Jersey. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Leasing: State Q&A Tool).

Execution and Enforceability

1. Describe any formal requirements for the execution of a lease. In particular, specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.
- There are any other important requirements in your state.

For information on whether New Jersey has adopted electronic signatures, electronic recording, or remote online notarization (RON), see Question 20.

Witnesses

Witnesses are not required to execute a commercial lease in New Jersey.

Acknowledgments

In New Jersey, acknowledgments are not required to execute a commercial lease. However, acknowledgments are required to record a lease or memorandum of lease.

Counterpart Signatures

Counterpart signatures are enforceable in New Jersey if explicitly provided for in the lease.

Other Requirements

In New Jersey, a commercial transaction intended to create a lease for more than three years is not enforceable unless:

- The term of the lease, the leased premises, and the identity of the lessor and lessee are established in a writing that is signed by or on behalf of the party against whom enforcement is sought.
- Clear and convincing evidence proves the term of the lease, the real estate, and the identity of the lessor and lessee.

(N.J.S.A. 25:1-12.)

2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

For a form of New Jersey memorandum of lease, see [Standard Document, Memorandum of Lease \(NJ\)](#)

3. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

New Jersey has adopted remote online notarization (RON) (N.J.S.A. 52:7-10 to 52:7-19; N.J.A.C. 17:50-1.1 to 1.18); Question 20). There may be specific requirements for acknowledgments certified using RON. For more information, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart: New Jersey](#).

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

- Is named in and personally signed the attached instrument.
- Signed this instrument as [his/her] own act.

Title: [AUTHORIZED OFFICER TITLE]

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

- Signed the attached instrument as [TITLE] of [CORPORATION NAME], a corporation named in this instrument.
- Is authorized to execute the attached instrument on behalf of such corporation.
- Executed the attached instrument as the act of such corporation.

Title: [AUTHORIZED OFFICER TITLE]

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

- This person is the [Secretary/Assistant Secretary] of [CORPORATION NAME], a corporation of the State of [STATE], named in the attached instrument.
- This person signed the attached instrument as the attesting witness for the proper corporate officer, who is [NAME] the [President/Vice President] of such corporation.
- The said [President/Vice President] was authorized to execute the attached instrument on behalf of such corporation.

- This person witnessed the said [President/Vice President] execute the attached instrument as the act of such corporation.
- This person signed this acknowledgment to attest to the truth of these facts.

[SIGNATURE]

(Attesting Witness)

Signed and sworn to before me on this [MONTH]
[DAY], [YEAR].

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Liability Company – Individual Member

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss
)

I CERTIFY that on this [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that [he/she] is the managing member of [NAME] L.L.C., a [STATE OF FORMATION] limited liability company, and that [he/she] is authorized to execute the attached instrument on behalf of [NAME] L.L.C., and that [he/she] executed the attached instrument as the act of [NAME] L.L.C.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Liability Company – LLC Member

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss
)

I CERTIFY that on this [MONTH] [DAY], [YEAR], before me personally appeared [NAME], who I am satisfied is the individual who executed this instrument and, who being duly sworn by me, did depose and say that:

- [He/she] is the [TITLE] of [NAME] L.L.C., the sole managing member of [NAME] L.L.C., a [STATE OF FORMATION] limited liability company.
- [He/she] is authorized to execute this instrument on behalf of [NAME] L.L.C., the sole managing member of [NAME] L.L.C.
- [He/she] executed this instrument as the act of [NAME] L.L.C., on behalf of [NAME] L.L.C.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Individual General Partner

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- Is a general partner of the limited partnership named in the attached instrument.
- Personally signed the attached instrument.
- Signed this instrument as his or her own act as such general partner on behalf of, and as the act of, such limited partnership.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Corporate General Partner

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person

Title: [AUTHORIZED OFFICER TITLE]

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Representative Capacity (Corporation, Limited Liability Company, Limited Partnership, or Trust)

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I declare under penalty of perjury that on [DATE], [NAME(S) OF INDIVIDUAL(S)] as [TYPE OF AUTHORITY, SUCH AS OFFICER, MEMBER, PARTNER, OR TRUSTEE] of [NAME OF ENTITY ON WHOSE BEHALF THE RECORD WAS EXECUTED] appeared before me by communication technology and acknowledged under oath, to my satisfaction, that (this person/these persons):

- (Is/Are) named in and personally signed the attached instrument.
- Signed this instrument as [his/her/their] own act.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Disclosures, Certifications, and Implied Uses

4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

In New Jersey, commercial landlords must disclose known latent defects at the premises.

The landlord is not required by law to provide compliance certificates.

Additionally, commercial landlords must provide information as to whether the rental property that is the subject of a lease is determined to be located in a flood zone or area (N.J.S.A. 46:8-50).

5. Is a lease deemed to include an implied warranty of fitness for intended use?

New Jersey recognizes an implied warranty:

- Against latent defects (see *Reste Realty Corp. v. Cooper*, 53 N.J. 444, 454 (1969)).
- Of fitness of premises for leased purposes (see *Hyland v. Parkside Inv. Co.*, 10 N.J. Misc 1148, 1149 (1932) (finding “express guaranty” of fitness where leased premises restricted to particular purpose).

Term, Renewal, and Early Termination

6. Are there any legal restrictions which:

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

Limit on Maximum Term

In New Jersey, there is no limit on the maximum term of a commercial lease, but a lease of 99 years or more is subject to the realty transfer fee (see Question 10).

Tenant Renewal

No New Jersey statute requires the landlord to allow a commercial tenant to renew its lease.

Early Termination

In New Jersey, there is no law that allows a commercial tenant to terminate its lease before the express expiration date. However, a lease may be terminated before the expiration date resulting from:

- Damage due to casualty (N.J.S.A. 46:8-7). To the extent that the lease stipulates each party’s obligations in the event of a casualty, the terms of the lease will govern.
- A condemnation or an eminent domain proceeding.

7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

In New Jersey, advance notice by a commercial landlord to the tenant for an automatic renewal of the lease term is not required by law but is solely governed by the terms of the lease.

Rent and Security Deposits

8. Are there any legal restrictions on:

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

Maximum Rent

In New Jersey, there is no legal restriction on the amount of rent that may be charged for commercial, industrial, office, or retail leased space. This is a matter of contract between the parties.

Operating Expenses

In New Jersey, there are no legal restrictions on the amount of operating expenses that may be passed through to the tenant for commercial, industrial, office, or retail leased space. This is a matter of contract between the parties.

9. For security deposits:

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest-bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

Commingling Permitted

There is no New Jersey statute that governs security deposits in commercial leases. This is a matter of contract between the parties.

Interest-Bearing Account

New Jersey does not have a statute that governs security deposits in commercial leases. This is a matter of contract between the parties.

Administrative Fees

There is no New Jersey statute that governs security deposits in commercial leases. This is a matter of contract between the parties.

For more information about security deposit requirements across jurisdictions, see [Security Deposit Laws \(Commercial Lease\): State Comparison Chart](#) and Quick Compare Chart: Commercial Security Deposit Laws.

Transfer Taxes and Other Taxes

10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:

- Rate for the tax and how it is calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Rate and Calculation

Generally, in New Jersey, no state or local transfer taxes are triggered when a commercial lease is signed or in the later assignment of a lease. However, a realty transfer fee is due if either:

- The leasehold interest is for at least 99 years.
- There is language in the lease that allows either party to extend the lease term beyond 99 years.

(N.J.S.A. 46:15-5 and 46:15-7.2.)

Subject to certain exemptions, New Jersey's realty transfer fee is calculated and payable at statutory rates based on the consideration. For leases of 99 or more years, the consideration for purposes of calculating the realty transfer fee is the assessed value of the property for real estate tax purposes, as of the date of the lease. (N.J.S.A. 46:15-5(c), 46:15-7(a), and 46:15-7.1(a).)

New Jersey also imposes a supplemental transfer tax on the transfer of certain classes of commercial property where the consideration paid is more than one million Dollars (N.J.S.A. 46:15-7.2; see).

Return

In New Jersey, if a realty transfer fee is due in connection with a commercial lease of 99 or more years, or in connection with a lease that allows either party to extend the term to 99 or more years, then an Affidavit of Consideration, setting out the consideration and identifying the property to be transferred, must be filed when the lease or memorandum of lease is presented for recording (N.J.S.A. 46:15-7.2).

Timing

If due, the realty transfer fee must be paid when the lease or memorandum of lease is presented for recording. The county clerk will not accept the document for recording without payment of the realty transfer fee.

For more information about New Jersey's transfer taxes, see [Practice Note, Transfer Taxes: Overview \(NJ\): Realty Transfer Fee](#) and Purchaser Transfer Fee ("Mansion Tax").

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and Quick Compare Chart: State Transfer Taxes.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:

- Percentage of ownership interest that triggers the taxes.
- Rates for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

New Jersey state and local transfer taxes (see Question 10) do not apply to a transfer of a commercial tenant's ownership interests.

New Jersey does, however, impose a tax on the sale or transfer of a controlling interest in any entity that has a direct or indirect ownership interest in classified real property if the consideration paid for the controlling interest is over \$1 million (N.J.S.A. 54:15C-1(a)).

Percentage of Interests

"Controlling interest" means:

- For a corporation, more than 50% of the total combined voting power of all classes of stock of that corporation.
- For a partnership, association, trust, or other organization, more than 50% of the beneficial ownership of classified real property of that partnership, association, trust, or other organization.

(N.J.S.A. 54:15C-1(g).)

Rate and Calculation

The tax is 1% of the consideration paid on the sale or transfer (N.J.S.A. 54:15C-1(a)).

Returns

The entity should file a New Jersey [Controlling Interest Transfer Tax Form](#) (Form CITT-1).

Timing

The form should be filed by the last day of the month following the month in which the sale or transfer of a controlling interest is completed. Payment of the tax must accompany the return. (N.J.S.A. 54:15C-1(b).)

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about New Jersey's Controlling Interest Transfer Tax, see [Practice Note, Transfer Taxes: Overview \(NJ\): Controlling Interest Transfer Tax](#).

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and Quick Compare Chart: State Transfer Taxes.

12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.

Commercial landlords are not required to collect taxes on rent or other taxes from tenants in New Jersey.

Assignment, Financing, and Transfers

13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?

Under New Jersey case law, a tenant may assign or sublet the leasehold interest and may transfer the lease or leasehold interest if the lease does not expressly stipulate the contrary (see *Berkeley Dev. Co. v. Great Atl. & Pac. Tea Co.*, 214 N.J. Super. 227, 234 (Law Div. 1986)). It is unclear under New Jersey case law whether a reasonableness standard would be implied if the lease requires the landlord's consent.

14. If the lease does not expressly define the term "assignment" and there is no other express restriction in the lease to the contrary, can the:

- Tenant's corporate ownership interests be freely transferred without the landlord's consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord's consent?

Transfer of Ownership Interests

In New Jersey, whether a transfer of the tenant's ownership interests would trigger the landlord's consent requirement depends on the actual language of the lease. If the lease does not define an assignment to include a transfer of ownership

interests in the tenant, the ownership interest would be freely transferable.

Security Lien or Pledge of Ownership Interests

A tenant may place a lien on its leasehold interest or pledge its corporate ownership interests in connection with a financing without the landlord's consent unless restricted by the terms of the lease itself (see *Anthony L. Petters Diner, Inc. v. Stellakis*, 202 N.J. Super. 11 (App. Div. 1985) (reasoning that "a lessee may legally give a mortgage on his leasehold interest," citing *Bramhall v. Hutchinson*, 42 N.J. Eq. 372 (E&A 1886))).

15. When a lease requires a landlord's consent for an assignment and defines the term "assignment" to include a transfer of the tenant's corporate ownership interests, would an indirect transfer of the tenant's interests trigger the landlord's consent requirement?

Whether an indirect transfer of the tenant's ownership interests would trigger the landlord's consent requirement depends on the actual language of the lease and the facts of the transaction.

16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?

In New Jersey, absent an express provision in the lease, the assignment of a lease does not relieve the tenant of its contractual undertakings in the lease.

17. Describe any restrictions on the landlord's ability to transfer the real property subject to the lease. Does this transfer affect the tenant's rights or obligations?

There are no express statutory restrictions on a commercial landlord's ability to transfer real property subject to a lease in New Jersey. There may, however, be express restrictions in the lease itself. The landlord's transfer may affect the tenant's rights if

the provisions of the lease relieve the landlord of its obligations upon the transfer of the real property.

Remedies

18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

Implied Remedies

There is no implied remedy that would permit the acceleration of rent for the balance of the term. Landlords may sue periodically as the unpaid rent is fixed. Many landlords obtain possession of the premises and wait until the premises are re-let so that they may fix their damages and then sue to collect.

Self-Help

Self-help is not a favored remedy in New Jersey. Landlords cannot use force in exercising self-help. In the event of an unlawful distraint, a landlord may be liable for treble damages (N.J.S.A. 2A:39-8).

Eviction Proceeding

Landlords can bring a summary dispossession action in the Landlord/Tenant Section of the Special Civil Part in the Superior Court Law Division (N.J.S.A. 2A:18-53). In cases of non-monetary default, the landlord must send the tenant a notice to quit the premises and demand for possession before taking action.

The trial date is between 10 and 30 days from the date of service of the complaint.

If the landlord prevails, a judgment for possession is entered and enforced by the issuance of a warrant for removal (N.J.S.A. 2A:18-57).

Expedited Remedies

Summary dispossession is an expedited proceeding (*Hodges v. Sasil Corp.*, 189 N.J. 210, 221 (2007)). A landlord may also file an order to show cause to permit distraint of the tenant's property.

Mitigation of Damages

New Jersey courts have held that a landlord must mitigate damages even if the lease does not include an express requirement for mitigation of damages (*McGuire v. City of Jersey City*, 125 N.J. 310, 320 (1991)).

For more information about mitigation of damages across jurisdictions, see [Commercial Landlord's Duty to Mitigate: State Comparison Chart](#) and Quick Compare Chart: Commercial Landlord's Duty to Mitigate.

Automatic Termination of a Lease in a Foreclosure Action

19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?

Generally, a New Jersey commercial tenant's leasehold interest is not automatically terminated after completion of a foreclosure of the property unless the foreclosing lender both:

- Includes the tenant as a named party defendant in the foreclosure action.
- Properly serves the tenant in accordance with all applicable statutes and court rules.

A tenant may have different rights, however, depending on a variety of factual issues, including whether:

- The lease was made before or after a default or the filing of a lis pendens regarding the subject loan, or both.
- The tenant entered into a subordination, non-disturbance, and attornment agreement (SNDA) with the foreclosing lender.

- The lease contains specific language regarding the subordination of its terms to any current or future financing.
- The lease (or a memorandum of lease) is recorded before the recordation of the foreclosing lien.

The best way to avoid termination of a subordinated lease is for the tenant to enter into an SNDA with the current and future mortgagees of the property.

Electronic Signatures, Recording, and Notarization Laws

20. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Despite New Jersey's adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures, remotely notarized documents, or both, and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

Electronic Signatures

New Jersey has adopted the UETA (N.J.S.A. 12a:12-1 to 12a:12-26).

Electronic Recording

New Jersey has not adopted the URPERA. However, recording of electronic documents is permitted under N.J.S.A. 46:26a-1 to 46:26a-12.

Remote Online Notarization

New Jersey has adopted RON (N.J.S.A. 52:7-10 to 52:7-19; N.J.A.C. 17:50-1.1 to 1.18).

There may be specific requirements for performing RON. Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#). To view and customize comparison charts on electronic signatures, recording, and notarization laws across states, see Quick Compare Chart, State Laws on Electronic Signatures, Electronic Recording, and Remote Notarization.

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