

MODEL LEASE CLAUSE

Don't Let Tenant Mask Assignment Profit

The following lease clause was drafted by New York City attorney Aaron C. Kinderlehrer. Use it when your tenant assigns its lease to another party.

Paragraph a requires the tenant to pay you a portion of any "Assignment Proceeds." Paragraph b defines "Assignment Proceeds" and permits the tenant to deduct limited amounts from those proceeds (note that the terms "Improvements" and "Tenant Improvement Allowance" must be defined elsewhere in the lease).

Paragraph c lets you get receipts from the tenant to verify its costs. Paragraph d requires that if the assignment payment is made in installments, the tenant's expenses will be amortized over the installment payment period. Paragraph e defines "Tenant's Property," which is used in the definition of "Assignment Proceeds."

Show this clause to your attorney before putting it into your lease. [CLLI0097](#)

SHARING OF ASSIGNMENT PROFITS

- a. Payment of Profits.** Tenant shall pay to Landlord upon receipt thereof, an amount equal to [*insert %*] of all Assignment Proceeds (as hereinafter defined).
- b. Assignment Proceeds.** For purposes of this Clause, "Assignment Proceeds" shall mean all consideration payable to Tenant, or Tenant's designee, directly or indirectly, by any assignee, including Landlord pursuant to Clause [*insert # of recapture clause*], or any other entity or person related to, or affiliated with, assignee, or any other amount received by Tenant or any entity or person related to, or affiliated with, Tenant (including, but not limited to, any subsidiary or sister corporation) from, by reason of, or in connection with any assignment (including, but not limited to, sums paid for the sale, rental, or use, or consideration received on account of any contribution, of Tenant's Property (as hereinafter defined)) after deducting therefrom:
 - (i) Reasonable out-of-pocket costs and expenses of Tenant in making such assignment, such as [*insert fees, e.g., broker's fees, attorney's fees, and advertising fees*], but only to the extent actually incurred and paid by Tenant to unrelated third parties in connection with such assignment;
 - (ii) The cost of improvements or alterations made by Tenant expressly and solely for the purpose of preparing the Premises for such assignment, as determined by Tenant's federal income tax returns;
 - (iii) The then unamortized or undepreciated cost of all Improvements determined on the basis of Tenant's federal income tax returns, reduced by any Tenant Improvement Allowance given to Tenant by Landlord;
 - (iv) The then unamortized or undepreciated cost of any of Tenant's Property leased to such assignee determined on the basis of Tenant's federal income tax returns; and
 - (v) In the event of a sale (or contribution) of Tenant's Property, the then unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns.
- c. Furnishing Information.** Tenant agrees to promptly furnish Landlord with information (including, but not limited to, receipts) regarding the payment the costs and expenses listed in Paragraphs b(i) through b(v) hereof, as Landlord may request from time to time.
- d. Installment payments.** If the consideration paid to Tenant for any assignment shall be paid in installments, by lease or otherwise, then the costs and expenses specified in Paragraph b hereof shall be amortized over the period during which such installments shall be payable.
- e. Tenant's Property.** For purposes of this Clause, "Tenant's Property" shall mean Tenant's movable fixtures and movable partitions, telephone, and other equipment, furniture, furnishings, decorations, and other items of personal property.