

OPTIONAL LEASE CLAUSES

The following are just a few of the optional lease clauses that you may wish to include in your lease. Additional clauses are found in the sample leases at the end of this web page. Your attorney should review any clauses that you add or modify.

1. **Joint Tenants clause.** In case of multiple residents, make sure that all the people who are renting your apartment are *jointly* liable for any lease infractions, including money owed, by adding after their names *“as joint tenants and not as tenants in common.”* Another benefit of having this clause is that any notices required or permitted by the terms of the lease may then be given to any resident, and shall have the same effect as if given to all.
2. **Termination clause for false and/or missing information on application.** If the tenant made false or misleading statements on the application or did not provide important pertinent information on the application, you can evict the tenant with the following clause: *“The tenant certifies that all the information provided on the lease application was true and accurate and that no significant omissions of important information that would have likely lead to a rejection were made. Also, that the information and terms of the application become a part of this lease for the rental premises, and any misrepresentation or significant omission of important information in the application shall be grounds for termination of the lease at the landlord’s option.”*
3. **Termination clause for when property is sold.** Frequently, landlords will be required by the buyer of the property to have the apartment units vacant upon closing. In the case of tenancies-at-will that is a simple and straightforward procedure with the 30-day no-cause notice. However, in the case of a written lease or rental agreement that can be problematic. A lease carries over to the new owner. Thus, every landlord should consider adding a clause in the lease that states that *the landlord may, at the landlord’s discretion, terminate the lease upon 30 days notice to the tenant in the event that the property is sold.*
4. **Waiver clauses.** Consider adding one or more of these clauses:
 - a) *If any provision in the lease is determined to be unenforceable and illegal under Maine law or void against public policy, it shall not affect the validity of the remaining provisions or portions. Only the clause(s) that are illegal and severable will be voided. The rest of the lease stands.*
 - b) *Any provision of applicable federal state or local law shall take precedence over any conflicting or inconsistent provision of this lease.*
 - c) *If tenant is under the Section 8 voucher program and there is any conflict between the provision of a tenancy addendum required by HUD and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control*
 - d) *The failure of management or tenant to exercise any right or remedy as provided herein shall not affect the right to do so at a later date for similar or other causes.*
5. **Payment Order clause.** Tenants may claim that their last check was for the current month’s rent when they actually owe you for the remainder of the security deposit, rent for previous months, late fees and/or damages, etc. Don’t let their argument that they are current on their rent prevent your from evicting them. Make it clear that they are late in paying their rent by including this clause in the lease: *“Payments received will always be applied first to the charges that are the most distant out. These may include the security deposit balance, previous unpaid rent, late fees and damage charges. The remainder of the payment, if any, will be applied to the current rent due. This allocation by the landlord takes precedence over any other designation that a tenant may write on the check or money order.”*

6. **Renter's Insurance clause.** Renter's insurance protects the renter's property and provides liability insurance to the renter. It may reduce the landlord's liability and it could help to prevent the landlord's insurance carrier from not renewing the policy. You can make renter's insurance mandatory or optional. If you wish to make it mandatory, consider a clause like the following: *"Tenant agrees to take out a renter's insurance policy to cover personal property, including furniture and clothing. The policy will have a minimum of \$300,000 in liability insurance. Proof of insurance will be required prior to moving in. By signing up for this insurance with your auto insurance company, you could be entitled to a 5% discount on your auto insurance."*

If you believe that the market will not allow you to make this insurance mandatory, here is a sample clause worth considering: *"The advantages of Renter's Insurance have been discussed with tenant. The Landlord's policy only covers the building itself where you live. It does not cover any of your personal belongings against damage or disappearance; nor does it cover you for negligence should you, for example, leave a burner going under a pan and start a fire. Renter's insurance insures your property and provides you with liability protection in the event of damages or bodily injury to others due to your negligence. By signing up for this insurance with your auto insurance company, you may be entitled to a 5% discount on your auto insurance."*

7. **No smoking-in-building clause.** Why risk a building fire caused by a careless smoker? Why put up with burn holes in floors and carpets, with yellowed paint, or with extra cleaning costs when smokers move? Consider adding this clause: *"You and your guests **will not smoke** in the apartment or building for these reasons: 1) fire potential, 2) other residents may be allergic to smoke, and 3) extra cleaning costs required when smokers move. You and your guests may smoke outdoors only if cigarette butts are deposited in the provided receptacles and are not scattered on the grounds. Any extra cleaning costs caused by smoking in the apartment are not considered to be due to normal wear and tear and will be charged to the tenant."*
8. **Prompt notification-for-repairs clause.** Small problems can become big ones if not attended to on a timely basis. Therefore, consider adding this clause: *"Tenant agrees to promptly notify landlord or his agent (verbally and/or by certified mail) of need for any repairs to the leased premises, such as, but not limited to, repairs required for: a) a water leak, excessive moisture, or standing water either inside the unit or in any community common area; b) mold growth in or on the leased premises that persists after tenant has tried to remove it with a commercial mildew remover or a combination of water and bleach; c) pest infestation; d) a malfunction in any part of the heating, air-conditioning, or ventilation system in the leased premises."*
9. **Delayed Possession clause.** There may be times when occupancy cannot be given by the promised date through no fault of the landlord. This clause covers such a situation: *"In the event landlord cannot deliver possession of the premises to tenant upon the commencement of the lease term, through no fault of landlord or its agents, then landlord or its agents shall have no liability, but the rental herein shall abate until possession is given. Landlord shall have thirty (30) days in which to give possession. If possession is tendered within thirty (30) days of the commencement of the lease term, then tenant agrees to accept delivery of the premises and shall be responsible for rent from the date of delivery. In the event that Landlord or its agents through no fault of their own is unable to deliver possession of the premises within thirty (30) days of the commencement of the term, then this agreement and all rights therein shall terminate."* A shorter version of this type of clause might read as follows: *"Landlord is not responsible if tenant is unable to take occupancy of the lease apartment because the present tenant fails to vacate. Rent will be reduced for this period, or tenant may cancel lease and receive a full refund."*

10. **Renewal clause.** The landlord has the option of having the lease contain renewal language, an option to renew or may provide for none of the above so that the lease will automatically terminate. If a lease contains automatic renewal language, it should continue to have the lease in effect on a month-to-month periodic basis thereafter. It should not allow for automatic renewal for another year. If the landlord elects to have this optional language, it should indicate that the terms of the rent and other monetary terms shall be negotiated by the parties. If the parties do not have a meeting of the minds, the lease will terminate. If the tenant remains on the premises after the lease terminates and the landlord accepts rent, a tenancy-at-will is created. See Title 14 M.R.S.A. §6002 and other sections of state law governing tenancies-at-will.
11. **Death clause.** What happens when a tenant dies during the lease term? As in many other instances, it depends on the language in the lease. A lease clause could spell out exactly what happens regarding termination of the tenancy and access to the premises. Here is one example, provided by Attorney David J. Van Baars of Shankman & Associates: *“This agreement shall automatically terminate on the first day of any month following the death of the Tenant. If there is more than one Tenant, this provision shall only apply upon the death of the last surviving Tenant.”* Without such a clause, the lease continues and is binding on both the landlord and the tenant’s estate.
12. **Pet clause.** A pet agreement or lease clause that does not say which “creatures” are or are not allowed is hard to enforce. An unclear policy leaves open a loophole for residents who own snakes, lizards, gerbils, birds, fish, etc. A large water tank that breaks can cause a lot of damage. Residents may claim that your “no-pets” clause does not apply to them because they only have a snake and some birds, and not a dog or cat. See the Pet Agreement form at the end of this web page.
13. **Co-Signer clause.** If there is a co-signer, include a statement regarding who the co-signer is and mention that a Co-Signer Agreement addendum is part of the lease. Have that person sign the lease as a co-signer and not as a tenant. See the Co-Signer Agreement form at the end of this web page.
14. **Smoke Detector clause.** A high percentage of fire-related deaths occur when tenants are asleep. Therefore, it is important to have properly functioning smoke detectors. Consider adding a statement to your lease, similar to the following: *“Tenant or guests shall not interfere with, disconnect, or make inoperable the smoke detector(s). Interference with smoke detector(s) is against Maine law and a cause for eviction under this lease. YOUR SMOKE DETECTOR SHOULD ALWAYS BE KEPT IN WORKING ORDER. YOUR LIFE, AND THOSE OF OTHERS IN THE BUILDING, MAY DEPEND ON IT. Should the smoke detector emit a beeping sound indicative of a weak battery, tenant shall replace the battery.”*
15. **Credit Report clause.** Some tenants get behind in their rent, move and don’t leave a forwarding address. Without an address, the sheriff cannot serve them with court papers. This makes collecting money that they owe problematic. The following lease clause can help you to obtain their new address for use in collecting past due amounts. *“Tenant expressly authorizes owner or owner’s agent (including a collection agency) to obtain tenant’s consumer credit report, which owner or owner’s agent may obtain and use only if attempting to collect past due rent payments, late fees, or other charges from tenant, both during the term of the lease and thereafter.”* It is a good idea to ask the tenant to sign his/her name next to this clause and to date it.
16. **Utilities clause.** If paying the water/sewer bill is the tenant’s responsibility and tenant falls behind, the water company may place a lien on the landlord’s property. Owners may now ask the utility whether or not the tenant paid. Tenant permission for landlord to obtain this information is not required. The following clause allows the landlord to start an eviction when

a tenant fails to pay his/her water bill. *“Tenant’s failure to pay for utilities that are tenant’s responsibility shall be cause for eviction.”*

17. **Recycling clause.** More and more localities around Maine are passing laws requiring the recycling of garbage and waste. *“Tenant agrees to comply with all current and future recycling laws; agrees to sort, separate, and recycle garbage into whatever categories the law prescribes; and agrees to pay any fines or penalties either the landlord or tenant may get because of tenant’s failure to properly separate, dispose and recycle trash and other wastes.”*
18. **SDN, Terrorist or Other Criminal Activity Clause.** Under Presidential Executive Order 13224, apartment owners and a broad range of other entities, are prohibited from entering into a lease or other real property transactions with Specially Designated Nationals (SDN) and Blocked Persons. Failure to comply with the order may result in criminal penalties of from \$50,000 to \$10 million in fines and up to 30 years in prison. Non-compliance could also result in civil penalties of as much as \$1.075 million per violation. The SDN list contains the names of persons deemed to be involved in money laundering, drug trafficking, terrorism or terrorist financing. You may access this federal list by going to www.treas.gov/offices/enforcement/ofac/sdn/. A sample lease clause that covers SDN, terrorist or other criminal activity is the following: *“The resident represents that he/she is not on the Specially Designated Nationals (SDN) and Blocked Persons list. Resident authorizes additional periodic SDN checks, and permits the landlord to terminate the lease for terrorist, terrorist financing, money laundering, drug trafficking, sex offender or other criminal activity.”*
19. **Indemnification / Hold Harmless clause.** Under Maine law, a landlord and his/her agents cannot legally protect themselves from their own negligence. The following wording would seem to be acceptable under Maine law: *“Unless the Landlord or Landlord’s agent have been negligent, Tenant will indemnify and hold harmless the Landlord from any loss, damage, claim, demand, suits, judgments or liabilities that the Landlord may incur and from any costs or expenses to which the Landlord may be put, arising from any injury or death to persons or property, or any claim on account hereof resulting from the use of the leased premises or common areas by Tenant, and/ his/her guests and invitees.”*

Summary

Many of the optional types of clauses discussed above are fairly common, although wording will vary from lease to lease. Keep in mind that there are an infinite number of other clauses. Whichever ones you use should not be illegal provisions as defined under Title 14. M.R.S.A. §6030. (See previous section “What Should and Should Not Be In A Maine Residential Lease.”)

Scroll down to next page

