

Real Estate Leasing: Kansas

BROOK M. BAILEY, POLSINELLI PC, WITH PRACTICAL LAW REAL ESTATE

A Q&A guide to commercial real estate leasing law for landlords and tenants in Kansas. 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 and remedies. 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* (<http://us.practicallaw.com/1-517-4023>)).

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 homestead law requirements.
- There are any other important requirements in your state.

WITNESSES

Witnesses are not required for the execution of a lease in Kansas.

ACKNOWLEDGMENTS

Acknowledgments are not required for the execution of a lease in Kansas.

COUNTERPART SIGNATURES

Commercial leases may be signed in counterpart in Kansas.

HOMESTEAD LAWS

Kansas homestead laws and the rights of married persons in Kansas do not apply to commercial real estate leases in Kansas.

OTHER REQUIREMENTS

There are no other relevant requirements for the execution and enforceability of commercial leases in Kansas.

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?

A memorandum of lease is not required to be recorded for a lease to be enforceable against third parties in Kansas.

3. Provide the statutory form of acknowledgement for:

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

Section 53.509 of the Kansas Statutes provides short forms of acknowledgements. These acknowledgement forms can be used for recording instruments within Kansas, regardless of whether the instruments are executed and notarized in Kansas or in another state.



INDIVIDUAL

STATE OF [STATE])
 COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME].

[SEAL] [NOTARY SIGNATURE] _____
 Title (and Rank)
 My Appointment Expires: [DATE]

CORPORATION

STATE OF [STATE])
 COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [NAME], in such person's capacity as the [TITLE] of [NAME OF CORPORATION], a [STATE] corporation.

[SEAL] [NOTARY SIGNATURE] _____
 Title (and Rank)
 My Appointment Expires: [DATE]

LIMITED LIABILITY COMPANY

STATE OF [STATE])
 COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME], in such person's capacity as the [TITLE] of [NAME OF LIMITED LIABILITY COMPANY], a [STATE] company.

[SEAL] [NOTARY SIGNATURE] _____
 Title (and Rank)
 My Appointment Expires: [DATE]

LIMITED PARTNERSHIP

STATE OF [STATE])
 COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME], in such person's capacity as the [TITLE] of [NAME OF LIMITED PARTNERSHIP], a [STATE] limited partnership.

[SEAL] [NOTARY SIGNATURE] _____
 Title (and Rank)
 My Appointment Expires: [DATE]

TRUSTEE

STATE OF [STATE])
 COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME], in such person's capacity as the trustee of the [NAME OF TRUST].

[SEAL] [NOTARY SIGNATURE] _____
 Title (and Rank)
 My Appointment Expires: [DATE]

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 commercial lease arrangements, there are no statutory or legal disclosures or compliance certificates required to be delivered by either the landlord or tenant.

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

In a commercial real estate lease, there is no implied warranty of fitness for intended use.

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

There are no statutory restrictions on the maximum term of a commercial lease in Kansas.

TENANT RENEWAL

Landlords are not required to permit tenants to renew its lease, unless specifically bargained for and expressly stated in the lease agreement.

However, a tenant is deemed to be a tenant from year to year if both:

- The premises are leased for one or more years.
- The tenant, with the landlord's consent, continues to occupy the premises after the lease term expires.

(*Kan. Stat. Ann. § 58-2502.*)

EARLY TERMINATION

In Kansas, either the landlord or the tenant may give 30 days' written notice to terminate a tenancy at will. If rent is paid in intervals that are less than every 30 days, the termination notice period does not need to be greater than the payment interval. However, if the premises are furnished or leased by an employer to an employee, then a lease can be terminated within only ten days after written notice to vacate. In addition, tenants who are members of the US military do not need to give more than 15 days' written notice to terminate a tenancy, if the tenant must terminate the tenancy because of military orders. (*Kan. Stat. Ann. § 58-2504.*)

If a tenant for a period of three months or longer does not pay rent when due, then the landlord may terminate the lease after providing ten days' written notice unless the tenant pays the rent before the ten-day notice period expires (*Kan. Stat. Ann. § 58-2507*). A landlord may terminate a tenant's lease after providing three days' written notice if a tenant for a period of less than three months does not pay rent when due unless the tenant pays the rent before the notice period expires (*Kan. Stat. Ann. § 58-2508*).

In addition, a landlord is not required to notify a tenant of an early termination of a lease when a tenant-at-will commits waste (*Kan. Stat. § 58-2509*).

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?

A landlord is not required to provide notice to a tenant of an automatic renewal of a lease. It is regular practice in Kansas, however, for a landlord to provide a renewal notice to the tenant.

RENTS 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 Kansas, there are no legal restrictions on the amount of rent that a landlord may charge.

OPERATING EXPENSES

There are no restrictions on passing through operating expenses or other charges to the tenant, as long as the lease agreements specify the amounts.

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?

COMINGLING PERMITTED

A landlord is not required to hold a security deposit in a separate bank account for commercial leases.

INTEREST BEARING ACCOUNT

A landlord is not required to hold a security deposit in an interest bearing account for commercial leases.

ADMINISTRATIVE FEES

A landlord is not required to pay interest on a security deposit for commercial leases.

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

There are no transfer taxes in Kansas for commercial leases.

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.
- Rate for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

There are no transfer taxes in Kansas for commercial leases.

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

In Kansas, a landlord is not required to collect any state or local taxes in a commercial lease.

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?

Unless the lease specifies otherwise, a tenant must obtain the landlord's written consent to transfer the tenant's interest under the lease if the lease either:

- Is for a term of less than two years.
- Is at will or by sufferance.

(*Kan. Stat. Ann. § 58-2511.*)

If a tenant leases farm lands and the landlord owns substantially all the improvements on the land, the tenant may transfer the tenant's term and improvements without the landlord's consent. A lease provision is void if the provision both:

- Either:
 - prohibits the tenant from transferring the term without the landlord's consent; or
 - requires the tenant or the tenant's assignee to remove the buildings or improvements.
- Does not require the landlord or the new tenant to pay the owner of the improvements the fair value of the improvements to the land at the time the lease expires.

(*Kan. Stat. Ann. § 58-2501a.*)

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

Kansas law does not prohibit a tenant from assigning its ownership interest without the landlord's consent. A landlord and tenant can agree in writing that the tenant must obtain the landlord's consent before the tenant assigns its ownership interest.

SECURITY LIEN OR PLEDGE OF OWNERSHIP INTERESTS

Kansas law does not prohibit a tenant from pledging its leasehold interest or placing a lien on its ownership interest without the landlord's consent. A landlord and tenant can agree in writing that the tenant must obtain the landlord's consent before the tenant pledges its leasehold interest or places a lien on its ownership interest.

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?

An indirect transfer of the tenant's interest in the tenant's corporate ownership would not trigger the landlord's consent requirement to an assignment unless the lease explicitly prohibits the indirect transfer of ownership interest.

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?

If an assignee of a lease accepts liability under the lease, then the original tenant is released on the date of the assignment (see *Euler v. Kessler*, 131 P.2d 907, 908 (*Kan.* 1942)).

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 restrictions on landlord's ability to transfer the real property subject to the lease. The landlord is not required to obtain the tenant's consent to transfer the real property, unless the lease specifies otherwise. However, if the property is sold to a new owner, but the tenant has not been notified of the sale, the rent paid to the former landlord or owner is payment in satisfaction of tenant's rent payment obligations under the lease (*Kan. Stat Ann. § 58-2513*).

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 are no implied remedies available to a landlord.

SELF-HELP

A landlord cannot exercise self-help remedies if a tenant breaches a lease. Any type of force to evict a tenant from the premises is illegal and can result in criminal penalties.

EVICITION PROCEEDING

A landlord must first provide the tenant with three days' (three consecutive 24-hour periods) written notice to correct the breach if the default is a payment default (*Kan. Stat. Ann. § 61-3803*).

Once a lease has terminated, then the landlord must properly serve an eviction notice on the tenant. The landlord must deliver the notice at least three days before commencing the lawsuit. (*Kan. Stat. Ann. § 61-3803*.)

If the tenant does not vacate the premises within the specified period, then the landlord must file a petition for forcible detainer. The petition must:

- Describe the premises.
- Specify why the landlord seeks possession.

(*Kan. Stat. Ann. § 61-3804*.)

In addition, if the tenant owes rent, the landlord may either:

- Include a request for judgment for the rent due in the petition.
- Bring a separate lawsuit for the amount due.

(*Kan. Stat. Ann. § 61-3804*.)

Kansas law does not specify how much notice a landlord must provide a commercial tenant for a default that is not a payment default. For a **residential** lease, a landlord must first provide the tenant with written notice to correct the breach as follows:

- 14 days' notice, for any other material non-compliance with the lease. If the tenant does not correct the breach, then the lease terminates within 30 days after the notice period expires (*Kan. Stat. Ann. § 58-2564*).
- 30 days, with no reason for termination needed, if the lease is a month-to-month lease.

An eviction proceeding in Kansas typically lasts 30 days.

EXPEDITED REMEDIES

There are no expedited remedies available to landlords in Kansas.

MITIGATION OF DAMAGES

Landlords have a duty to mitigate damages (*Lindsley v. Forum Restaurants, Inc.*, 596 P.2d 1250, 1254 (Kan. Ct. App. 1979)). However, the landlord is not required to execute a new or different contract. The landlord is only required to exert reasonable efforts to prevent or minimize damages within the bounds of common sense. Kansas courts consider the totality of the circumstances when determining whether a landlord fulfilled the duty to mitigate damages. (*Leavenworth Plaza Assocs., L.P. v. L.A.G. Enterprises*, 16 P.3d 314, 317 (Kan. Ct. App. 2000).)

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?

Kansas is a lien theory state, meaning that in Kansas, a mortgagee is not entitled to immediate possession of the property on default because the mortgage is merely a lien and not a form of title. Therefore, a lease is terminated by the foreclosure of a prior mortgage **only** if the tenant is made a party to the foreclosure proceeding. (*Citizens Bank & Trust v. Brothers Constr. & Mfg.*, 859 P.2d 394, 396 (Kan. Ct. App. 1993).)

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at practicallaw.com. For more information or to schedule training, call **888.529.6397** or e-mail training.practicallaw@thomsonreuters.com.